



AUSTRALIAN COLLECTORS &  
DEBT BUYERS ASSOCIATION

4 June 2021

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By email: [david.salisbury@accc.gov.au](mailto:david.salisbury@accc.gov.au)

Dear David,

### **ACCC debt collection industry engagement and compliance**

We refer to your email invitation dated 20 May 2021 for Australian Collectors & Debt Buyers Association to offer its perspectives on current and emerging issues in the debt collection sector and are pleased to contribute the following for your consideration:

#### **Note**

Below all references to:

- *Collectors* means those involved in contingent and/or debt purchase collections.
- *Debt buyer or debt purchaser* means those holding an Australian Credit Licence and collecting debts under assignment from an original credit provider.
- *Contingent collector* means those collecting on behalf of an original credit provider on the basis of a 'principal and agent' relationship.

#### **Overview**

The Australian debt collection sector in 2021 is in good shape following in recent years, a substantial increase in the compliance requirements for all collection firms.

There have been a number of drivers for this, including:

- Commencement of the Australian Financial Complaints Authority;
- The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry;
- *The Financial Sector Reform (Hayne Royal Commission Response) Act 2020*, and impending breach reporting obligations;
- Amendments to IDR requirements, with the impending commencement of *Regulatory Guide 271 – Internal Dispute Resolution*, and its enforceable penalty regime;
- Commencement of *The Privacy Amendment (Notifiable Data Breaches) Act 2017 (Cth)*;

- Amendments to the Banking Code of Practice;
- Increased community and client expectations in light of the global COVID-19 pandemic; and
- Increased oversight by regulators including ACCC enforcement action which particularly saw telcos adopting an increased compliance focus similar to the banks.

In response to the significant changes in the environment, industry participants are increasingly competing based on their compliance performance and the value proposition of brand protection in an increasingly regulated environment.

There has also been an extensive increase in client involvement and auditing. Contingent and debt purchase clients alike, are investing significant resources in monitoring the activities of their collection partners. Members report a strong shift from previous auditing regimes, where policies and procedures were the central focus, to an increased focus on evidence of controls and control outputs.

Audits have moved from a 'tell me' format to a 'show me and provide evidence' format, ensuring that controls are in place and operating effectively to mitigate the intended risk.

The increased audit focus has driven the industry forward with best practices articulated as expectations by clients and adopted by industry participants so as to remain competitive. Members report that such controls even when not mandated are adopted across all clients and sectors as best practice and for simplicity of implementation.

At this mature stage of the sector, we submit additional regulatory intervention or oversight is unnecessary and possibly unhelpful in driving further positive outcomes for consumers.

Members report the industry has experienced a contraction since the onset of the pandemic, with a number of debt referrers and sellers remaining absent from the market, or reducing volumes referred to contingent collectors and debt buyers. We are concerned a further increase in regulatory focus at this time may be detrimental to the industry as it recovers.

We respectfully submit any increase in regulatory focus should neither be weighted to a particular collection model (debt purchase or contingent collections) nor focussed on a particular industry sector (such as the telco or utility sector) so as to avoid adverse market reaction.

We note our members are currently working hard to ready themselves for the October 2021 deadline involving the commencement of numerous additional legislative and regulatory obligations. Increased regulatory focus during this time is likely to be distracting, as member firms work through the new obligations, particularly in light of the late regulatory guidance, much of which is yet to be finalised.

At a practical level, we submit a more nuanced balanced approach is warranted to allow collection firms to focus on their customers: by delivering compliance rather than reporting on compliance.

The narrative of the collection industry as historically portrayed by some media and stakeholder commentators, suggestive of a non-compliant industry with a high volume of complaints is neither true nor supported by empirical evidence. It is out-dated and misleading.

Instead, the industry has a high annual volume of contacts with consumers, characterised by a low incidence of complaints to Internal Dispute Resolution and an even lower number of complaints escalated to External Dispute Resolution (refer extracted ACDBA statistics<sup>1</sup> over the page).

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<sup>1</sup> [www.acdba.com/index.php/industry-demographics](http://www.acdba.com/index.php/industry-demographics)

Extract from ACDBA Industry Data Survey							
Period	FY2020	FY2019	FY2018	FY2017	FY2016	FY2015	FY2014
Respondents	13	14	15	16	16	18	17
<b>Consumer Contacts Made</b>							
<b>Total*</b>	69,219,325	123,918,410	109,139,040	96,462,665	63,217,722	59,514,030	65,426,503
<b>Complaints Received</b>							
<b>Via IDR</b>	15,190	8,364	6,194	7,015	12,055	10,171	6,925
<b>Escalated from IDR to EDR#</b>	419	690	Not collected				
<b>Via EDR</b>	2,484	2,473	1,864	1,872	1,820	1,864	1,811
<b>Complaints as a Percentage of Consumer Contacts Made</b>							
<b>Via IDR</b>	0.0219%	0.0067%	0.0057%	0.0073%	0.0191%	0.0171%	0.0106%
<b>Via EDR</b>	0.0036%	0.0020%	0.0017%	0.0019%	0.0029%	0.0031%	0.0028%
* 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							

Industry statistics show a low number of complaints found in favour of the complainant by the Australian Financial Complaints Authority (AFCA)<sup>2</sup>:

Extract from Visual Comparative Report published by AFCA about financial complaints in Australia					
Period	Membership Type	No. of complaints received	Resolution at Registration & Referral	Complaints reaching Decision stage	Decisions in favour of Complainant
Jul20-Dec20	All AFCA members	34,212	50%	8%	1.9%
	Debt collector or buyer members	861	56%	2%	0.9%
Jul19-Jun20	All AFCA members	76,872	47%	6%	1.7%
	Debt collector or buyer members	2,560	51%	2%	0.6%
Nov18-Jun19	All AFCA members	45,290	43%	5%	1.6%
	Debt collector or buyer members	1,884	45%	1%	0.3%

The industry outperforms other sectors on headline dispute resolution data, including its response rate and resolution rates.

Combined, the above statistics are clear evidence of a mature, professional and compliant industry.

As noted above, today's collections industry matured by embracing compliance, addressing costs and reputational issues - placing firms in the position where competitive focus is routinely now on the basis of compliance and brand protection rather than pricing.

<sup>2</sup> AFCA Datacube at data.afca.org.au

## **Responses to issues raised**

- Policies and procedures in relation to **debt sales and assignments**, including disclosure of adequate information to debt collectors

Without access to the internal policies and procedures of debt sellers, ACDBA and its member debt buyers are unable to directly comment on seller specific documents, however it is appropriate to note, our members report arrangements for debt sales and assignments are subject to constant dialogue between seller and buyer.

Members report that debt sellers generally no longer impose restriction on the provision of documentation and information required by buyers to respond to consumer complaints.

Members report that increasingly, sellers provide to buyers an array of documentation for each assigned account, at the time of sale, including:

- the application for the credit;
- the credit agreement;
- the last 12 months of statements for the account; and
- evidence of the affordability of the credit at the creation of the account.

The Australian Banking Association (ABA) in 2019 issued a guideline<sup>3</sup> to reflect good industry practice and encouraged its member banks to use the guideline to set internal processes, procedures and policies from 1 March 2020 for the sale of unsecured debt. The guideline was issued to complement the provisions of the ABA Banking Code of Practice<sup>4</sup>.

The policies, procedures, systems and activities of collectors working pursuant to debt sale agreements and/or service level agreements with individual banks are subject to an array of ongoing audits to confirm compliance to the expectations of the client bank. Those audits embrace:

- operational aspects relating to collection activity and hardship accommodations
- the control framework designed to mitigate compliance risk
- data security and other governance
- regulatory and contractual obligations including results of any due diligence activities to monitor and confirm compliance
- volumes and types of complaints and audit of complaint handling processes
- required monthly KPI reporting

Consequently, transparency of the activities of collectors to their client banks is high.

- **Dealing with disputed debts**

Extensive guidance provided to the collections industry through instruments such as ASIC Regulatory Guide 165 (RG 165) has resulted in the application of compliance standards consistently across the entire range of accounts under collection.

Collection of all accounts including disputed debts are prefaced on dealing in 'good faith' so as to ensure conduct is always based on engaging efficiently, honestly and fairly with consumers.

Consumers when dealing with collectors whether in regard to finance debts or telco and utility accounts are able to be represented by an authorised third party including financial counsellors and consumer lawyers.

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<sup>3</sup> Australian Banking Association *Industry Guideline: Sale of Unsecured Debt* - issued November 2019

<sup>4</sup> Australian Banking Association *Banking Code of Practice* – issued July 2019

RG 165 requires Internal Dispute Resolution to be available for proper and timely consideration of complaints by consumers generally but also specifically in relation to disputed debts. This guide will shortly be replaced by RG271, supporting shorter response times, requiring greater reporting to senior management and the board, and focusing on systemic issue identification and remediation.

In relation to financial service accounts, for debt buyers as Australian Credit Licensees and members of AFCA, the consumer is able to escalate unresolved complaints to External Dispute Resolution (EDR) – similarly in contingent collections, a consumer can revert to the original credit provider for access to EDR.

Industry members routinely track ‘bounce rate’ metrics from IDR to EDR – across the industry, less than 3% of customers who complain through a member’s IDR process, remain dissatisfied and escalate their complaint to AFCA.

Avenues of complaint escalation are also available for telco and utility debts through Ombudsman schemes including the Telecommunication Industry Ombudsman (TIO) and the state based Energy and Water Ombudsman schemes.

Accounts under the National Credit Code are subject to strict timelines and processes for considering hardship requests and disputes with collection firms in their operations routinely adopting similar methodology for all consumer debts.

The ABA Banking Code of Practice sets the framework which collectors must meet in assisting consumers either making a hardship request or when disputing a debt.

Debt Sale Agreements increasingly contain provisions requiring escalation of sensitive matters and the right of recourse or step in, for such matters, including those that relate to hardship, vulnerability or other dispute. Similar provisions also exist for referral of accounts back to original credit providers in the situation of contingent collections.

Apart from misuse of AFCA processes by some complainants and their representatives, particularly for-profit debt managers, so as to avoid payment of legitimately due debts, or to pressure creditors to remove valid default listings through weaponisation of the AFCA fee structure, we are unaware of any emerging or pressing issue relating to disputed debts.

- **Dealing with vulnerable consumers, including those requiring hardship assistance or using payment plans**

Accounts which are assigned to debt buyers by bank and financier debt sellers 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 buyers are specialists in dealing with and managing hardship as they almost exclusively interact with customers in some form of financial difficulty.

Industry participants have invested significantly in controls to support positive outcomes for vulnerable consumers, with many engaging external experts to train operational staff. Some participants use, or are exploring, sophisticated controls, including RegTech solutions such as speech to text and artificial intelligence, in pursuit of better customer outcomes and increasing their value proposition around brand protection for their clients.

Further to our earlier explanation of the wide array of audits provided for by debt sale agreements and service level agreements with banks and other creditors, ACDBA members report consumer vulnerability is at the forefront of all those audits. Collectors are required to demonstrate their vulnerability policies and controls and to provide evidence of regular testing of the efficacy of those policies and controls.

Collectors provide hardship assistance to consumers in an environment subject to a variety of considerations stemming from obligations on the original credit or utility provider, including:

The ACDBA Code of Practice<sup>5</sup> requires subscribers which are all ACDBA members to take extra care in their dealings with vulnerable consumers and in dealing with financial hardship.

The Banking Code of Practice<sup>6</sup> and the Customer Owned Banking Code of Practice<sup>7</sup> both detail standards required of subscribers to the Codes in dealing with vulnerable consumers and customers in financial hardship. Such standards equally apply to collectors acting for those banks whether as contingent collectors or debt buyers.

The Australian Energy Regulator (AER) sets out requirements<sup>8</sup> for all energy retailers for their customer hardship policies including:

- processes to identify customers experiencing payment difficulties due to hardship
- processes for the early response to customers in hardship
- flexible payment options (including payment plans and Centrepay)
- processes to identify and notify customers of government concession programs and financial counselling services
- an outline of programs that the retailer may use to assist hardship customer

The Communications Alliance (CA) requires subscribers to its Code<sup>9</sup> and their suppliers including collectors to meet certain obligations in relation to financial hardship and debt collection.

As can be seen, collectors already meet a wide array of expectations from original credit providers in relation to appropriately assisting vulnerable consumers including those in financial hardship.

- Debt collection issues in relation to **specific sectors or types of debts**. We are particularly interested in issues with and examples of debt collection practices in the **telecommunications** and **energy** sectors (including the role of the debt sellers)

We are unaware of any specific debt collection issues affecting the telecommunications and energy sectors we note an ACDBA member's observation was telcos are generally more engaged than other sectors to stay involved with their customer, particularly in the event of any dispute being raised, encouraging referral back to allow the debt seller the opportunity to fully and efficiently resolve the concern. This attitude aligns with the seller's obligations pursuant to the Telecommunications Consumer Protections Code<sup>10</sup>.

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<sup>5</sup> Australian Collectors & Debt Buyers Association *Code of Practice* – issued January 2020

<sup>6</sup> Australian Banking Association *Banking Code of Practice* – issued July 2019

<sup>7</sup> Customer Owned Banking Association *Customer Owned Banking Code of Practice* – issued January 2018

<sup>8</sup> Australian Energy Regulator *Customer Hardship Policy Guideline Version 1* – published March 2019

<sup>9</sup> Communications Alliance *Telecommunications Consumer Protections Code* – published 2019

<sup>10</sup> *ibid*

As outlined earlier, we submit it would be detrimental for any regulatory focus to be weighted to a particular sector or model, given there does not appear to be any evidentiary support to suggest a particular model or sector is contributing to poor consumer outcomes.

- Issues you are aware of with the practices of any specific debt sellers and or debt collection businesses

ACDBA is unaware of any practices warranting ACCC attention at this time.

- Any specific **compliance or best practice messaging** you would like to see for debt sellers and/or debt collectors.

Possibly ACCC and colleague regulators under appreciate how effective their regulatory guidance, the environment, and the regulatory reforms have been in determining the current landscape of the Australian collections industry.

As cited earlier, industry associations representing debt buyers & collectors, banks, utilities and telcos have all adopted consistent standards in relation to the dealings associated with debt collection including special considerations for vulnerable consumers and those experiencing financial hardship.

Many of the Codes of those associations require subscribers to embed an obligation on debt buyers and collectors to regard the joint ACCC/ASIC Debt Collection Guideline as 'black letter law' for the purpose of determining best practice for collections.

Specifically, the ACDBA Code<sup>11</sup> requires its subscribers to:

*“Comply with all relevant laws and best practice guidelines relating to the Australian Collections industry including the ACCC/ASIC Debt collection guideline and updates thereto”*

Finally, in regard to messaging generally and with reference to our earlier observation regarding the misuse of the AFCA complaints process by some complainants and their third party representatives, we encourage ACCC in its messaging to consumers to not only explain their rights to dispute a debt but also set out their responsibility to fairly, honestly and completely detail the basis of any dispute so as to facilitate prompt resolution of any genuine dispute.

ACDBA and its directors would welcome an opportunity to meet with your team to discuss the above perspectives.

Yours sincerely

**AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION**



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<sup>11</sup> Part C.1.4 of Australian Collectors & Debt Buyers Association Code of Practice – issued January 2020