AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

1 November 2012

Mr Richard Weksler
Assistant Director
Compliance Strategies Branch
Australian Competition & Consumer Commission
Level 35
360 Elizabeth Street
MELBOURNE VIC 3000

By email: richard.weksler@accc.gov.au

Dear Richard,

ACCC/ASIC 'Debt collection guideline for collectors and creditors' publication review

Thank you for the email invitation received 2 October 2012 to provide comments on the current Debt Collection Guideline for Collectors and Creditors (the Guideline) together with any emerging issues which might be covered in the revised guideline.

Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009. Membership is voluntary and open to all debt collectors and debt buyers. Our members[1] represent the majority of the collection market in Australia.

ACDBA and their members support the Guideline and acknowledge it has positively contributed to the increased level of compliance and ethics of the Australian debt collection industry.

ACDBA believe the Australian debt collection industry is well regulated, and that in the vast majority of cases, consumers are treated in a reasonable and ethical fashion by industry participants. This view is supported by reporting showing a low complaint rate across files under collection with ACDBA members. As at June 2012, ACDBA's membership had 2.76M files under collection, and members had made approximately 37.6M contacts with debtors over the prior twelve months. From these 37.6M contacts our members reported that just 4513 complaints were made to Internal Dispute Resolution (IDR), External Dispute Resolution (EDR) or a Regulator – representing a complaint rate of 0.012%. We estimate that the files under collection with ACDBA members represent 75% of the Australian collection market.

We agree the Guideline should be reviewed to ensure it reflects changes to laws affecting debt collection and in response to your request to identify any other issues of concern, we are pleased to advise:

[1] Refer Annexure A for details of members of Australian Collectors & Debt Buyers Association

Specific concerns:

PART 1: USING THIS GUIDELINE

A development of the Australian collection environment in recent years has been the emergence and growth in paid Debt Mediation and Credit Repair consultants. ACDBA supports the view that Debt Mediation and Credit Repair businesses should be regulated and be required to hold an Australian Credit Licence (ACL) and be held accountable to regulatory standards associated with such licence.

If Debt Mediation and Credit Repair consultants were required to hold an ACL, section 47 of the *National Consumer Credit Protection (NCCP) Act 2009* would impose a requirement upon these businesses to engage in their authorised credit activities efficiently, honestly and fairly, and to hold membership of an external dispute resolution ("EDR") scheme so as to provide consumers with a level of protection against unscrupulous operators. Additionally, holding an ACL requires the licensee to take reasonable steps to ensure its representatives comply with the credit legislation, and ensure that representatives are adequately trained, and are competent, to engage in the credit activities authorised by the licence. We contend that at present, many Debt Mediation and Credit Repair companies are not meeting these basic standards.

Such regulation would we submit, also assist in addressing what members see as systemic abuse of the EDR process directly related to the activities of paid Debt Mediation and Credit Repair consultants. The rationale to bring such businesses under the ACL regime is to ensure these firms conduct themselves in a manner that is aligned to the consumer's best interests.

Annexed are examples of correspondences from two separate Debt Mediation and Credit Repair firms, which we believe reflect a number of concerns, which we set out below in relation to the two examples:

- ***Annexure B*** is a letter from 'Mr Credit Repair' to an individual (names and personal details of individuals have been obscured to protect their privacy). Judgment has apparently been obtained by a creditor of the individual to whom the letter is addressed.

  The letter states or implies that 'Mr Credit Repair' can, amongst other things, stop further proceedings and costs, reduce the amount of debt owed and remove the listing on the plaintiff's credit file.

  Given that none of these outcomes is necessarily achievable, and certainly not something any party could offer without a legal practitioner reviewing the file given it is before the courts, we submit that the letter is likely to mislead the consumer.

- ***Annexure C*** is a letter from Credit Repair Australia Pty Ltd requesting that an ACDBA member remove a default listing. The letter:

  - incorrectly cites the Uniform Consumer Credit Code (which was in fact largely superseded by the NCCP Act 2009 at the time the letter was sent);

- incorrectly cites obligations regarding enforcement proceedings under "…*section 80(1)(a) of the Consumer Credit Code of Conduct*" (that Code contains no such section, and enforcement proceedings were not brought against the consumer in any event);

- makes misrepresentations about the consumer's contact with our member (the letter states he tried to apply for hardship, when in fact he paid the account in full shortly after our member made contact with him);

- cites "…*section 18E(8)(c)*" without confirming what legislation it refers to – our member can only assume that the letter meant to cite the *Privacy Act 1988*; and

- Incorrectly states that our member is subject to the jurisdiction "…*of the FOS*" when the member was in fact a member of the Credit Ombudsman Service Ltd.

The ACDBA member involved sent several comprehensive IDR responses to Credit Repair Australia, which explained why the default listing was made correctly, and went on to say that accordingly the default listing should not be removed.

Credit Repair Australia ultimately proceeded to lodge a complaint with COSL about the member. This resulted in significant cost to our member. After approximately six months of correspondence between COSL, Credit Repair Australia and the ACDBA member; Credit Repair Australia ceased responding to COSL, causing the complaint to be closed.

The foregoing progression of events is symptomatic of typical practices that our members experience from Debt Mediation and Credit Repair companies on a daily basis.

The Debt Mediation and Credit Repair company will cite numerous pieces of legislation (often incorrectly, or irrelevant to the complaint), in an attempt to intimidate and compel the member to remove a legitimate default listing on a credit file. Where the member does not comply with the request, the Debt Mediation and Credit Repair company will often lodge a baseless complaint with the member's EDR.

Ultimately the EDR may close the complaint in favour of the member, however this is subsequent to the member incurring significant cost in EDR fees. This practice is not only unfair to individual ACDBA members (and other affected credit providers) from a cost perspective, but may also have the effect of some credit providers removing correct default listings for commercial reasons, thus undermining the overall integrity of the credit reporting system in Australia.

If the Guideline is not extended to include Debt Mediators and Credit Repairers then we submit such organisations ought to be mentioned in the section, **Debtor's responsibilities** (page 5). Additionally, it is appropriate that such section be further amended to require debtors to have an obligation to approach the EDR process honestly, and that their paid representatives should have an obligation to not make misleading representations to EDR schemes or to use the EDR process in any way that may constitute an abuse of process.

PART 2: PRACTICAL GUIDANCE

2. Making contact with the debtor

The requirement in 2(c) is in relation to divulging the identity of the caller as a collector prior to establishing the caller is speaking to the debtor. As long as the caller does not divulge information that would allude to the fact the debtor has a debt then it is not deemed to be in any breach of privacy laws. Accordingly we recommend that the Guideline be amended to acknowledge that a collector making a call and advising the name of the company he/she works for, would be acceptable practice.

The justification for this recommendation is that our members are increasingly experiencing that call recipients (either debtors or third parties) resist providing personal details to facilitate the verification of their identity before they know the name of the organisation that is calling them. Debtors and third parties may also perceive that a collector is being unprofessional and uncooperative if they are restricted from disclosing their company's name. Clarification is required in the Guideline that merely disclosing a company name does not constitute divulging that a debtor has a debt.

If the above recommendation is not actioned in the review of the Guideline, we alternatively recommend it should be clarified that withholding the collector's company name during a contact with a debtor (prior to verification of identity) or third party does not constitute conduct of misrepresenting its identity.

4. Frequency of contact

To facilitate the discussion of multiple accounts with a debtor in the one contact as provided for in 4(b), we recommend that it be clarified that for collectors working for multiple clients on a contingent basis, cross-referencing these debtor's accounts is acceptable.

7. Privacy obligations to debtor and third parties

In relation to 7(c) the bullet point dealing with "making inquiries about a debtor from a neighbour or an employer" we recommend the Guideline be amended to clarify that disclosing the collector's company name to a third party such as a neighbour or employer does not constitute disclosing that the debtor owes a debt.

8. When a debtor is represented

This section of the Guideline we recommend should be amended to clarify that a collector may make direct contact with a debtor who is represented by a Debt Mediator or Credit Repairer when such contact is made for a purpose that would reasonably benefit the debtor. Unfortunately, our members report that they have experienced numerous situations where Debt Mediators and Credit Repairers often charge debtors significant fees, but do not necessarily provide the debtor with all of the relevant information.

As an alternative to the above recommendation the list in 8(c) about the entitlement to contact a debtor directly should be expanded to allow for the circumstance where representatives such as Debt Mediators or Credit Repairers engage in potentially misleading or deceptive conduct, act unreasonably, place unnecessary obstacles in the path of reasonable negotiation efforts, fail or refuse to communicate all of the relevant information to debtors or do not hold the appropriate licenses.

Also specifically in relation to the obligation under 8(c) that a collector may only contact a debtor directly if the representative fails to respond to communications in a reasonable time (currently 14 days), we regard this is too long a time frame and should be amended to a more reasonable period of 7 days.

10. Providing information and documents

In this section, we recommend a clause be inserted to clarify that where no specific contractual right exists or where a contract is silent on the matter, and not where a specific contractual right prohibiting exists, that a reasonable fee may be charged for duplicate documents (as per clause 11.7 of the Code of Banking Practice).

14. Contact when a payment arrangement is in place

The requirement under 14 is a collector may only contact a debtor to alter an arrangement or to undertake a review (minimum 3 months between reviews).

We recommend that this section be amended to allow a collector to make contact to remind of up and coming payments (whether for an instalment or a lump sum settlement), particularly by way of SMS, email or other automated mode. If a debtor at any time objected to the reminder service, it should be ceased.

Similarly where a debtor makes a commitment to pay a lump sum payment at a future time, we believe it is reasonable for a collector to again contact the debtor closer to the payment due date, to courteously reconfirm that payment and answer any other queries the debtor may have. Again, if a particular debtor ever objected to this service it should not be repeated in respect of the specific debtor.
Reminder services of this style and purpose are commonly used by service providers in many other industries including by medical and dental practitioners to remind of upcoming appointments (particularly via text message), and this service can often be useful for the customer.

This amendment will genuinely assist debtors from a customer service perspective to ensure continuance of payments and is not an intention to harass the debtors with additional telephone, letter or face-to-face contact.

18. Conduct towards family members and other third parties

This section should be amended to clarify that contacting third parties of itself does not breach the Guideline. Similarly, it should also be clarified that disclosing the collector's company name does not constitute disclosing personal information or that the debtor owes a debt.

In the alternative, we recommend that it be clarified that withholding the collector's company name during a call with a third party does not constitute conduct of misrepresenting its identity.

23. The role of independent external dispute resolution schemes

Our members report experiencing situations where EDR schemes do not take the Guideline into consideration when dealing with complaints and disputes, despite 23(e) stating that the ACCC and ASIC encourage EDR schemes to do just that.

With the introduction of the National Consumer Credit Protection regime and the requirement that ACL holders be a member of an EDR scheme, a more consistent approach is needed for both creditors and EDR schemes, within the Guideline - this would significantly assist with the dispute resolution process.

Given the experience of our members, we strongly recommend that a provision should be included in section 23 that debtors and their representatives should make a genuine attempt to resolve a complaint or dispute via Internal Dispute Resolution (IDR) before lodging a complaint with an EDR scheme. Where there has been no effort to attempt IDR prior to lodging a complaint with EDR, we submit that EDR schemes should be required to reject the lodgement of the complaint.

PART 3: COMMONWEALTH CONSUMER PROTECTION LAWS

Under this section of the Guideline, it is recognised that positive disclosure of information can be required to avoid creating a misleading impression.

Further to recommendations made earlier in this submission, we suggest that it should be clarified that disclosing the collector's company name to either the debtor or a third party should, of itself, not constitute disclosure of the existence of a debt or personal information and therefore is not a potential breach of the Privacy Act 1988 (Cth), the National Privacy Principles or the Guideline.

Concluding remarks

As noted earlier our members support the Guideline and acknowledge it has positively contributed to the increased level of compliance and ethics of the Australian debt collection industry.

The recommendations and observations provided above are offered to assist ACCC in its review of the Guideline to ensure improved clarity of the Guideline to promote fairness for all parties whilst enhancing the protection of consumers.

Please do not hesitate to contact the writer if you require any additional information or explanation in relation to the matters canvassed in this submission.

Yours sincerely
AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

Alan Harries
CEO

Ph: 02 4925 2099
Em: akh@acdba.com

Annexure A:

The members of Australian Collectors & Debt Buyers Association are:

- ACM Group Limited
- Austral Mercantile Collections Pty Limited
- Australian Receivables Limited
- Baycorp (Aust) Pty Limited
- Charter Mercantile Pty Limited
- Collection House Limited
- Complete Credit Solutions Pty Limited
- Credit Corp Group Limited
- Credit Four Pty Limited
- Dun & Bradstreet (Australia) Pty Limited
- EC Credit Control Pty Limited
- Insolvency Management Services Pty Limited
- Pioneer Credit Pty Limited
- Shield Mercantile Pty Limited
- State Mercantile Pty Limited
- The ARMS Group Pty Limited

Annexure B:

20/8/2012

WE ARE HERE TO HELP YOU WITH THE UNFAIR TREATMENT YOU HAVE RECEIVED FROM

/ HAS LODGED A COURT SUMMONS IN THE MAGISTRATES COURT AGAINST YOU (COURT FILING NUMBER 2021/12 AND THE AMOUNT OF THE SUMMONS IS $64,892.28) ON THE DATE OF 8/13/2012 THAT IS GOING TO HAVE SERIOUS CONSEQUENCES AGAINST YOUR BUSINESS & PERSONAL FINANCIAL POSITION & IF YOU DO NOT ACT NOW YOU WILL LOSE MORE MONEY IN LEGAL FEES & OTHER COSTS?

DID YOU ALSO KNOW THAT THE SUMMONS IS NOW BLACKLISTED ON YOUR PERSONAL & BUSINESS CREDIT FILE IT VILL NOT BE REMOVED FOR 5 YEARS EVEN IF YOU PAY THE DEBT, WHICH IN TURN IS GOING TO MAKE IT NEAR IMPOSSIBLE FOR YOU TO GET ANY TYPE OF CREDIT BECAUSE THE CREDITOR WILL THINK YOU ARE TOO HIGH RISK!

Please note: We do not have any type of connection to the . We are an independent company that help people like you every day in resolving court proceedings and debts against them!

YOU MUST ACT STRAIGHT AWAY TO RECTIFY THIS BECAUSE THIS MATTER IS URGENT UNLESS YOU DO NOT CARE IF:

1. **You lose more money on court costs and lawyers fees which could amount to tens of thousands dollars**
2. **The Sheriff comes into your work premises or home to seize your assets**
3. **You are summoned to court for an oral examination where you will be required to disclose everything about you personal finances and financial position**
4. **You do not care if you are personally put into bankruptcy**
5. **You do not care if the Tax Department becomes involved and does an audit on you personally**
6. **You do not care that now your Credit File is BLACKLISTED and you will be unable to obtain any type of finance or credit for at least 5 years**

Would you like to stop any further proceedings and costs, so you do not lose any more money?
Would you like this debt negotiated down so you pay less back to .
Would you like to have the BLACK MARK you now have on your credit record/file removed?

DON'T MAKE THIS MISTAKE AND WAIT UNTIL IT IS TOO LATE! WE CAN HELP YOU FIX THIS SITUATION NOW BUT YOU MUST ACT STRAIGHT AWAY AND CALL US TODAY BECAUSE YOU ONLY HAVE VERY LIMITED TIME!

Consultation With No Obligation and to get more information about how we can Help You in resolving this debt and removing and cleaning the judgement from your credit file!

Regards

www.MrCreditRepair.com.au

Sydney	Melbourne	Brisbane	Perth	Adelaide
02 8004 3195	03 9005 9220	07 3077 8814	08 6365 2016	08 7200 3542
Bathurst St, Sydney, 2000	Collins St, Melbourne,3000	Mary St, Brisbane, 4000	Murray St, Perth, 6000	King William St, Adelaide, 5000

More and more companies are checking their customers and client's credit files before they offer any type of credit. Having any type of blemish on your credit file can have serious consequences on your financial situation and personal lifestyle because you may not be able to obtain finance or credit for anything.

If you have a judgement or a default listed on your credit file it will make it very difficult to obtain any type of loan. Once you have this BLACK MARK, it will not be removed for 5 years unless you have the intervention by a company like ours that specialises in removing defaults and judgements.

Not only will it prevent you from getting credit cards or a home loan etc, it can have an effect on your ability to connect simple things like:
- *Electricity & Gas*
- *Home or Business Landlines/Internet &/or Mobile Phones*
- *Trade Accounts*

or even borrowing dvd's!

Here is some questions you need to ask yourself:
- *Do I care or will I get embarrassed if I apply for credit and the sales person tells me that I am declined?*
- *Is there a possibility that I will be applying for any type of credit within the next 5 years e.g utility services, mobile phone, mortgage/home loan, credit card etc?*

SAMPLE OF WHAT THE JUDGEMENT ON YOUR CREDIT FILE WILL LOOK LIKE AND WHAT THE CREDIT PROVIDER WILL SEE THE NEXT TIME YOU APPLY FOR CREDIT

mycredit file

veda applied intelligence

Individual CREDIT REPORT

Public Record Information

Court Judgement(s)

Court Judgement information is publicly available information that is obtained from the courts.

Court Judgement information is retained for five years from the date of listing.

If this debt is paid out during this time it can be updated to indicate that it has been paid or settled. Please complete the Update Form (attached) and forward it to us with proof of payment including the date the debt was finalised so that we can amend the entry.

If you need any further information regarding the Court Judgements recorded on your Public Record File, please contact the plaintiff or court directly.

ALLAN, TONY	Company/Person That Has Judgement Against You
Last Updated:	20/8/2012
Judgement Date:	8/13/2012 2012 Date Judgement Was Ordered Against You
Reference:	A Summons was entered against you by . in the Magistrates Court, WA, Summons Number 2021/12 and the amount of the summons is $64,892.28
Status:	We have not been advised that this judgement has been finalised.
Deletion Date:	This will automatically be removed from your file on 8/13/2012 2017. This Judgement will not be removed from your credit file for a minimum of 5 yrs. Once a creditor sees this **BLACKMARK**, they will refuse you credit because they will think that you are a high risk!

Even if you pay out the Summons, it will not be removed. All that will be updated on your credit file is the status which will then say "Paid". A "Paid" status is not much different or better than a status that has not been finalised because when the creditor does a credit check on you, they will see that you have had prior problems with credit!

WE CAN REMOVE THIS FROM YOUR CREDIT FILE FOR YOU SO ANY FUTURE CREDITOR WILL NOT KNOW IT HAS EVER BEEN THERE!

Contact us now on **08 6365 2016** for a Free No Obligation Consultation to find out how we can help you!

Annexure C:

Credit Repair Australia®

7/12/2011

Our Reference Number: 12418

Dear Sir/Madam,

Re: Request for removal of default

Client Na
Veda Advantage File No
Date of Listing: 28/05/2010
Account No: ..

We advise we act for the above client and enclose a duly signed authority appointing Credit Repair Australia Pty Ltd to act on their behalf in this matter.

On the above date, a Payment Default was entered against our client's credit report.

Background

Our client has advised us of the circumstances leading up to the listed payment default.

Mr ı is in dispute with ' t in relation to a continuing credit contract in which he signed up for under an interest free period and has become under obligation, whilst our client was under financial obligation his financial position deteriorated and his capacity to make payments towards his financial obligation diminished due to his hours being cut down at work, our client states that he went from working a full forty hours a week to a minimum of fifteen hours a week, this putting severe financial pressure on our client.

Mr n states that he called t in regards to his unfortunate financial position and advised them he would not be able to pay his full agreed amount on his credit card and he requested to extend his interest free period and asked for some assistance in a payment option to have his credit card paid off,
Unfortunately Mr Ne was refused any assistance and the service representative he was liaising with was extremely rude and unhelpful this resulting in our client to fall into arrears with his committed financial obligation with .

Our client maintains that he was contactable at all time but unfortunately no contact was made in relation to his outstanding account nor did he receive any notification that a default would be listed on his credit file.

Since learning of our clients default he has since settled the amount and it has in fact been paid.

Credit Repair Australia Pty Ltd
ACN 120 248 311
PO Box 392 Moorebank
NSW 1875 Australia

Telephone (02) 8778 7950
Facsimile (02) 8778 7920
www.creditrepairaustralia.com.au

Dispute

Importantly, the obligation to inform a debtor of the hardship provisions of the UCCC arises where a credit provider becomes aware of circumstances where the hardship provisions of the UCCC "could apply" to the debtor. This awareness arguably arises as a result of any one or more of the following:

(a) Written communications made by the debtor to the credit provider regarding their financial difficulties;

(b) Oral communications made by the debtor to the credit provider regarding their financial difficulties;

(c) An application, whether oral or written, formal or informal, made by the debtor to the credit provider to modify their repayments as a result of financial hardship;

(d) The debtor's repayment history (on this view, the credit provider may be obliged to inform a debtor of the hardship provisions of the UCCC should the debtor fail to meet their repayment obligations under the terms of their credit contract. The argument being, the credit provider should reasonably be aware that the debtor 'could' be in default as a result of financial hardship such that the relevant provisions of the UCCC could apply).

Section 66 of the Uniform Consumer Credit Code applies equally to:

1. Banks and non bank members subject to the Code of Banking Practice and thus the jurisdiction of the FOS, provided it is in relation to the provision of credit to persons wholly or predominantly for personal, domestic or household purposes; and
2. Non-subscribing banks and other credit providers (not subject to the jurisdiction of the FOS) who provide credit to persons wholly or predominantly for personal, domestic or household purposes.

Section 66 of the Uniform Consumer Credit Code (UCCC) provides that a debtor who is:
(a) unable to meet their obligations under a credit contract;
(b) due to illness, unemployment or other reasonable cause; and
(c) who reasonably expects to be able to discharge their obligations should the terms of the credit contract be varied in one of the following ways: That is, by
i. extending the period of the contract and reducing the amount of each payment due; or
ii. postponing payments for a specified period; or
iii. extending the period of the contract and postponing payments for a specified period.
(d) may apply to the credit provider to vary the terms of their credit contract via one of the aforementioned methods.

The Consumer Credit Code of Conduct 1994 section 80 (1)(a) states that a credit provider must not begin enforcement proceedings against a debtor in relation to a credit contract unless the debtor is in default under the credit contract and the credit provider has given the debtor, and any guarantor, a default notice, complying with the section, inturn allowing the debtor a period of at least 30 days from the date of the notice to remedy the default.
As you are aware you have an obligation under section 18E(8)(c) to inform [redacted]n that information concerning his transaction with [redacted]t might be disclosed to a credit reporting agency. That subsection provides that a credit provider must not give to a credit reporting agency personal information relating to an individual if the credit provider did not, at the time, or before, acquiring the information, inform the individual that the information might be disclosed to a credit reporting agency.

We request that you reply to this request to withdraw the personal information wrongly given to the credit reporting agency within 30 days and subject to your reply, our client reserves position to make a complaint to the Privacy Commissioner.
We are led to believe this action to be harsh and unreasonable and that more compassion should have been shown in the above circumstances, in light of the enclosed facts our client requests that you delete the above default from this credit file.

This deletion is permitted by section 18J of the Privacy Act (1988) and the credit reporting code of conduct under section 18A of the Privacy Act (1988).

Our objective is to have the matter handled in a fair and reasonable manner whilst not impeding the integrity of your credit reporting system.

Resolution

Our client has advised us that they have suffered loss and damage to their reputation as a result of the above. It is evident that the loss and damage suffered by our client cannot be rectified by merely amending their credit report, as the passage of time precludes the ability to rectify the damage.

We draw your attention to section 18A of the Privacy Act (1988) p2.23, which requires you to act on the above and respond in writing to our office within ten (10) working days.

Accordingly, we give you ten (10) working days to make the necessary arrangement to delete the above information from our client's credit file and respond in writing to our office, confirming the deletion of this default from our client's credit file.

When replying, please quote Our Reference Number above.

Should you have any queries regarding the above, please contact the undersigned on (02) 8778 7952.

Yours faithfully,

Case Manager
Credit Repair Australia Pty Ltd