



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

12 August 2009

Ms Cebon & Walker
Strategic Policy
Australian Securities and Investment Commission
GPO Box 9827
MELBOURNE VIC 3001

By email: policy.submission@asic.gov.au

Dear Ms Cebon & Ms Walker

**Submission to ASIC Consultation Paper 110:
General conduct obligations of credit licensees**

The Australian Collectors & Debt Buyers Association (ACDBA) appreciates the opportunity to provide comment on the ASIC Consultation Paper 110: *General conduct obligations for credit licensees*.

We are strongly of the view that both contingent collectors and debt purchasers should be exempt from the National Consumer Credit Protection (NCCP) legislation and expect our 12 month exemption will become a permanent one.

Our members are not party to the initiation or execution of the transaction between the two originating parties (the credit provider and the consumer). Members' responsibility to the consumer relates specifically to their conduct in relation to the interactions they have to recover a debt. It has nothing to do with the legitimacy of the debt, or the conduct of the credit provider during the term of its relationship with the debtor.

The ACDBA welcomes harmonised and fair regulation to ensure the activity of debt collection (whether as an agent or other) should be managed to community standards. We believe that the National Consumer Credit Protection Bill is not the appropriate vehicle to bring about a national regime to manage our industry.

Regardless, we wish to comment on ASIC's Consultation Paper 110 so our industry perspective is considered in its development and included should we later find ourselves obliged to comply with the NCCP regime. Should our efforts to exempt the industry from the legislation not be supported then we seek to ensure that the regulations clearly acknowledge the unique nature of the debt management industry and exempt its participants from responsibility for any components that are not directly related to our members' activities.

In understanding our perspective, it is important ASIC appreciates there is no direct contractual relationship between collectors and debtors. Contingent collectors are bound by principal and agent relationships which govern all the criteria proposed under Regulatory Guide 104 (RG104). Debt purchasers and credit providers are party to warranties which cover compliance with their respective legislative obligations, including Credit Code compliance.

These are commercial arrangements between business entities, rather than direct contractual arrangements with consumers. The essential difference between contingent collectors and debt purchasers is that debt purchasers own the debt outright. The functions in respect to the actual recovery of a specific account, however, are exactly the same. In both models, the only entity at risk is the collections or debt purchase business itself, not the consumer and not the originating credit provider.

Little, if any, consumer financial detriment arises from debt recovery conduct whether in the context of contingent collectors or debt purchasers. Where the consumer has suffered loss or detriment in the original credit transaction, the debts are generally returned to the originating credit provider for resolution – in the case of contingent collectors this is based on the “principal and agent” relationship, whereas in the case of debt purchasers based upon the assignment agreements entered into between the debt purchasers and the original credit providers. In both situations, this places the responsibility for resolving contentious issues in the most appropriate place – with the parties involved in the conduct in question. And that is the approach that should be taken in relation to dispute resolution. The consumer should be referred to the scheme of the business responsible for the conduct in question.

It should be acknowledged an existing set of Guidelines issued and regulated jointly by ASIC/ACCC effectively manages the practice of debt collection and has established an industry participant compliance regime that is both robust and effective.

Our approach is entirely consistent with the theme of RG104, at pp 30 & 31, which makes it clear to each licensee ‘you can outsource functions, but not your responsibility as a licensee’. Debt collection, however undertaken, is essentially an outsourced function of credit licensees. If there is a problem with the making or management of the contract, or a compliance requirement to perform, the responsibility for that comes back to the credit licensee. As noted earlier, this responsibility is, and will be, managed by contractual obligations and commitments between credit licensees and those who provide debt collection services, whether as agent or purchaser.

Currently, our members are separately licensed at the individual and corporate levels across almost all states and territories. Many of those jurisdictions impose similar conduct obligations, although there is no consistency across jurisdictions. It is important any regulatory guidance from ASIC does not add to further compliance inconsistency, particularly given the anti-competitive effects of a compliance regime which is predicated on major corporations but applies equally to sole traders and partnerships with far more limited resources.

Consequently, should debt collectors and debt purchasers be subject to the NCCP regime, ASIC’s regulatory guides need to distinguish between the obligations imposed on those licensees who have contractual arrangements with consumers and those, like the debt collection industry, who simply provide a very narrow service through principal and agent or debt purchase arrangements. Scalability of obligations must be addressed in this context.

In relation to our industry, we recommend ASIC accept compliance with a licensing regime in any other jurisdiction as meeting the general conduct obligations of licensees until national harmonisation of our sector is achieved. Both Treasury and the Ministerial Council on Consumer Affairs (MCCA) have recognised the need for harmonisation of the industry and we are currently liaising with a number of State and Federal authorities to achieve a national regulatory regime. We expect significant progress to be made in the coming months, particularly given the Government's commitment to a review of the industry in light of the NCCP legislation.

While RG 104 indicates ASIC will take into consideration the nature, scale and complexity of the business, it does not indicate how ASIC will approach this. Clarity around the approach is important particularly when our members are required to address issues such as training, organisational competence, conflicts of interest, dispute resolution and resource adequacy, areas covered by other legislative obligations and/or under our contractual arrangements with our credit provider principals and vendors.

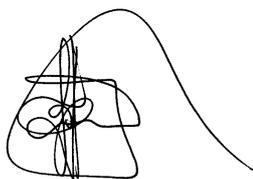
ASIC's approach to scalability must not only consider the nature, scale and complexity of the business, it must also consider the narrow focus of the services provided, the contractual arrangements in place between credit providers and our members and the broader legislative environment that regulates the sector. It extends well beyond credit and debt collection specific legislation.

We recommend ASIC provide further guidance on its approach to scalability. Alternatively, we would appreciate the opportunity to work with ASIC to develop a guidance specifically for the debt collection and debt purchase sectors that provides clarity around its compliance expectations for an industry already burdened with inconsistent regulatory regimes.

We will respond to ASIC's other Consultation Papers that address compensation and financial arrangements and training in similar terms.

We thank you for the opportunity to present our view and look to the opportunity to participate in further discussion.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Alan Harries', with a long, sweeping tail stroke extending to the right.

Alan Harries
CEO

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