



30 June 2009

**Debt collection feedback**  
**ACCC**  
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***AICM's response to the Debt collection practices in Australia:  
Summary of Stakeholder consultation***

The Australian Institute of Credit Management (AICM) welcomes the opportunity to respond to the paper *Debt collection practices in Australia: Summary of Stakeholder consultation* (the Paper) jointly produced by the ACCC and the ASIC.

AICM is the association for credit professionals in both commercial and consumer credit comprising both individual and corporate members from all industry sectors in Australia.

**Introduction**

AICM appreciates the acknowledgment of its role in promoting the *Debt Collection Guidelines* to its membership and the wider industry. AICM's support is evidenced by the inclusion of sessions on the *Debt Collection Guidelines* at AICM National Conferences and as appropriate inclusion in relevant components of AICM's qualification based training programs at all levels from Certificate III through to Diploma level. It is AICM's belief that formal qualification based training is an essential part of ensuring that credit professionals understand how to approach collection and debt recovery actions.

AICM would express its appreciation of the consultative approach adopted by ACCC and ASIC in matters relating to debt recovery and anticipates that this positive dialogue will be maintained.

AICM continues to support appropriate and effective debt collection practices and believes the *Debt Collection Guidelines* have played a central role in informing credit professionals of their rights and responsibilities. The companion publication *Dealing with debt: your rights and responsibilities* which is aimed at informing debtors has been of equal importance.

AICM would note that the recent introduction in Federal Parliament of the National Consumer Credit Protection Reform Package may impact upon the content of the *Debt Collection Guidelines* and would recommend that any amendments to the existing *Debt Collection Guidelines* be deferred until the status of the relevant Bills is determined.

### **Overall Comment on the Debt Collection Guidelines**

It is difficult to identify specific examples of how the *Debt Collection Guidelines* could be improved other than by way of additional examples and case studies.

One amendment that may be of assistance in achieving the overall objectives of the *Debt Collection Guidelines* could be to reorder the content so that the section dealing with the resolution of debtor complaints and disputes is placed at the beginning of Part 2 Practical Guidance. This would reinforce the necessity to promptly address *any* compliant or dispute arising from collection activity.

### **Specific comments**

#### 1. Harassment and Coercion

AICM does not support any collection practice that may be construed as harassment or coercion of debtors. The current *Debt Collection Guidelines* (the Guidelines) provide clear and concise guidance as to unacceptable practices and behaviours.

#### 2. Disputes about the debt

The resolution of disputed debt without undue delay is in the interests of all parties. AICM would confirm that it has been the experience of its membership the

disputation of a debt is periodically used by debtors as a means to delay or avoid responsibility for the debt. This issue as with many other issues considered in the Paper serves to reinforce the need for effective dispute resolution. The existing wording of Part 2 Section 12 of the Guidelines would appear to be sufficient.

### 3. Debt assignment and/or selling

AICM endorses that the reiteration of the legal requirement for the original creditor to advise the debtor of the sale of the debt and transfer of information would be beneficial. It may be useful to highlight in Part 2 section 9 of the Guidelines this legal obligation and restate that this is not a breach of the *Privacy Act*.

### 4. Incorrect credit default listing

AICM consistently reminds members through qualification based training and professional development of their obligations under the Credit Reporting Code of Conduct regarding incorrect listings. It may be useful in Part 2 section 7 to include specific reference to need to ensure that defaults should only be listed if the information is correct.

### 5. Difficulties negotiating repayment arrangements

Part 2 Section 13 of the Guidelines provides detailed advice concerning negotiation of repayment arrangements. Further elaboration would appear to be unnecessary.

It is noted that determining hardship and capacity to repay may be a complex issue and benchmarking may prove informative. AICM would suggest that if such benchmarking is to occur it should be undertaken in consultation with the ACCC and the ASIC.

### 6. Representations on consequences of non-payment

AICM views any attempts to mislead or deceive a debtor concerning the consequences of non-payment as a serious matter however, AICM does not believe

this to be a widespread practice amongst its membership and would not recommend any changes to the current wording of the Guidelines.

#### 7. Jurisdiction in which proceedings are instituted

Part 2 section 21 of the Guidelines outlines acceptable and unacceptable practice in relation to legal action. AICM is aware that on occasion legal proceedings may have commenced in a jurisdiction other than the one in which the debtor resides however there are often sound reasons for this practice such as the need to commence a number of legal proceedings in a cost effective manner. An alternative solution may be to include information to debtors in the publication *Dealing with debt: your rights and responsibilities* advice as to how a debtor may have the proceedings redirected to a different jurisdiction.

#### 8. Enforcement responses

The ability to enforce a debt is a legitimate process without which ultimately the provision of consumer credit would be seriously impaired. Equally a decision to enforce a debt is not taken lightly and without careful consideration of a range of factors pertinent to the particular circumstances of which the cost of enforcement is but one. The escalation of the recovery process to enforcement is usually a final step in the recovery process and only considered when other avenues have proved to be futile. AICM believes that the existing hardship provisions give appropriate guidance when considering enforcement remedies.

#### 9. Compliance programs

The intrinsic role of compliance in the work of credit professionals is reflected in AICM's qualification based programs all of which address compliance and the ongoing inclusion of compliance topics as part of AICM's professional development. AICM consistently reiterates that compliance should be embedded into an organisations culture and that compliance training does not begin and end with induction programs.

To reinforce this message it may be useful to include in Part 2 of the Guidelines a short section which highlights the need for compliance and refers readers to the Australian Standard for Compliance AS3806:2006.

#### 10. Complaints handling – internal dispute resolution

As previously discussed the handling of complaints is a key part of the debt recovery process. It may be useful to refer to the International Standard ISO 10002 on complaints handling which builds on the AS 4269:1995 on complaints handling.

#### 11. Complaints handling – external dispute resolution

The National Consumer Credit Protection Reform Package foreshadows a role for external dispute resolution schemes. AICM would recommend that Part 2 Section 23 of the Guidelines be reviewed once the National Consumer Credit Protection Reform Package has been passed by Federal Parliament.

#### 12. Financial hardship

AICM recommends to its membership that an effective starting point when attempting to recover outstanding debt is to work with the debtor to achieve an outcome that would be appropriate to the situation.

The issue of hardship is taken into consideration as part of these negotiations. AICM feels that a consistent approach to hardship within an organisation would be beneficial and would suggest that Part 2 section 13 (c) be amended to include this recommendation.

#### 13. Third party authorisations

AICM believes that the role and the consequential responsibilities of third party authorisations are understood and adhered to by credit professionals. AICM does not believe there is a need to amend the Guidelines in relation to third party authorisations. However, the use of a standard third party authorisation form jointly

developed by the ACCC, ASIC and the Privacy Commissioner could reduce possible confusion and miscommunication between creditors and debtors.

## **Conclusion**

AICM supports an ongoing role for the *Debt Collection Guidelines* as they provide a sound basis for effective, efficient and sound debt recovery practice. AICM looks forward to working with the ACCC and ASIC within a positive and informative framework which will serve to achieve the objectives of all parties involved in the recovery of outstanding debt.