



25 November 2010

Better Regulation Office
GPO Box 5341
Sydney NSW 2001

Australian Institute of Credit Management submission re

Review of the Debt Recovery Process Issues Paper

The Australian Institute of Credit Management (AICM) welcomes the opportunity to respond to the Better Regulation Office and Department of Justice Issues Paper – Review of the Debt Recovery Process.

Whilst members of AICM often have particular concern with the recovery of debt primarily arising from the supply of goods and the rendering of professional services the overall process of debt recovery is of vital interest to our membership.

In the majority of cases, business does undertake the steps outlined at p 4 of the Issues Paper prior to granting a credit facility. However this does not prevent a business from experiencing delays in payment or indeed defaults.

As noted in the Issues Paper legal action is expensive and time consuming and is usually only utilised when all other recovery avenues have failed.

AICM would also highlight that the current inconsistencies between jurisdictions in relation debt recovery serve to impede and confuse creditors understanding of the debt recovery process. The resulting inconsistency and certainty of the determination of claims and associated costs is detrimental to the Australian economy. Thus, AICM recommends that there be harmonisation between jurisdictions and would recommend that this issue be considered at the next meeting of the Council of Australian Governments.

In addition, any consideration of debt recovery processes should be undertaken in light of the recent introduction of the *Personal Property Securities Act 2009* (Cth)

which provides remedies for secured parties which will not necessarily require legal action.

AICM would make the following response in relation to the options for reform contained in the Issues Paper.

Option 1: Reduce the need to attend court using online tools

Most businesses are now familiar with using web based online services for example in relation to banking and taxation matters. Thus there would be familiarity with the concept of using an online facility.

AICM believes that whilst the United Kingdom option of allowing creditors and debtors to make and respond to claims online is attractive it is mindful that the set up costs may be in the short term substantial. Therefore AICM would in the first instance support the greater use of JusticeLink as this would seem to make the best use of existing infrastructure and would be in a context with which some potential users would already be competent.

Option 2: Reduce the complexity of processes

Option 2a: Build on the effectiveness of the Small Claims Division of the Local Court

The Issues Paper is correct in concluding that the size of the debt does not necessarily determine whether or not a matter will be complex. However there is considerable merit in increasing the monetary jurisdiction of the Small Claims Division. Increasing the threshold to \$30,000 would seem to be appropriate however AICM recommends that the threshold should be set in line with the highest maximum monetary value of other jurisdictions' equivalent courts.

Option 2b: Further measures to encourage parties to reach settlement

Mechanisms which will contribute to the settlement and payment of outstanding debt are to be encouraged. The proposal that parties attend pre-trial reviews would seem to be meritorious especially if this could be achieved through media such as the online court established through JusticeLink.

Option 2c: Amend court procedures for debt recovery matters

AICM supports the introduction of the concept of a 'Notice of Intent to File a Defence' being introduced so that uncontested matters could be dealt with expeditiously.

Option 2d: Expand the jurisdiction of the Consumer, Trader and Tenancy Tribunal

AICM does not support the expansion of the jurisdiction of the Consumer, Trader and Tenancy Tribunal to deal with debt recovery matters. Whilst this Tribunal performs an excellent role in dealing with matters that currently fall within its jurisdiction AICM does believe this to be the appropriate forum for dealing with commercial debt recovery matters.

Option 2e: Establish a Debt Disputes Tribunal

AICM does not believe that the cost of establishing a Debt Disputes Tribunal would be matched by a more streamlined recovery process. Further as noted in the Issues Paper at p 17 increasing the recovery options available to creditors may serve to impede effective debt recovery.

Option 3: Improve availability of information on debt recovery

Option 3a: More effective delivery of information on debt recovery

Any strategy which will increase both creditor and debtor understanding of debt recovery is to be welcomed and supported.

One delivery option which could be considered would be an 'app' on debt recovery and debt management for a smart phone. This would be particularly relevant to young people who are at risk of entering into financial contracts which they do not fully understand.

Option 3b: Notifying debtors of their obligations and options

This option accords with the provisions of the *National Consumer Credit Protection Act 2009* (Cth) whereby debtors must be given specified information when they

have defaulted. Again this is an example of where harmonisation of legislation would be beneficial to all parties.

Option 4: Improve enforcement arrangements

Option 4a: Garnishee order changes

Any mechanism which will enhance the effectiveness of garnishee orders is supported.

Option 4b: The Sheriff's office to offer a suite of enforcement options for a single fee

Whilst it is noted that the introduction of this option would result in a higher fee AICM supports the concept that the Sheriff's Office would be able to offer a package of services which would serve to streamline the recovery process. The introduction of such a service would give a greater degree of confidence to creditors that the due process was been undertaken whilst at the same time minimise the need for multiple applications and court proceedings.

Option 4b: Give Sheriff's officers the authority to enter a property to execute a writ of execution on goods

Again AICM supports this option.

Option 4d: Allow a writ against land to be issued for debts under \$10,000

AICM is unable to ascertain any significant advantage to creditors which could arise from the implementation of this option. Further AICM would question whether this option would accord with the provisions of the *National Consumer Credit Protection Act 2009* (Cth).

Option 4f: Credit and financial counselling post-adjudication

This option is worth considering if it will assist debtors to reach a fair and equitable arrangement with their creditors.

AICM does not believe that any of the options considered in this Issues Paper represent an diminution of privacy or civil liberties.

Yours sincerely

A handwritten signature in black ink, appearing to read "Del Cseti". The signature is fluid and cursive, with a prominent initial "D" and a stylized "C".

Del Cseti
Manager External Affairs