



ASIC

Australian Securities & Investments Commission

ASIC–ACCC debt collection publications launch

A speech by Professor Berna Collier, ASIC Commissioner, to the Australian Institute of Credit Management National Conference, Gold Coast, 14 October 2005 at the launch of the 'Debt collection guideline: for collectors and creditors', and consumer brochure 'Dealing with debt – your rights and responsibilities'.

Together with the ACCC, ASIC is pleased to be able to release this guideline and the associated consumer brochure *'Dealing with debt – your rights and responsibilities'*¹ here at this conference, especially as so many members of the debt collection industry are able to be present.

I would like to start by saying how encouraged ASIC was by the level of constructive engagement that has already been evident from the debt collection industry throughout the process of developing the guideline. ASIC and ACCC undertook extensive stakeholder consultation in developing the guideline, including the issue of two public consultation drafts, and holding a debt collection roundtable.

We did this because we wanted to create a document that is both practical and genuinely useful to the debt collection industry. Having observed the level of industry involvement in the process of drafting the guideline, we now hope that it will be adopted and used throughout the industry.

As Louise Sylvan has already foreshadowed, as well as launching the industry guideline I would like to speak briefly about the consumer brochure, which is a partner to the guideline, and is also being launched today.

I will also provide you with some information about the focus of ASIC's current regulatory activities in relation to the debt collection industry.

But first, I would like to give you a brief overview of ASIC's regulatory role and jurisdiction in relation to debt collection, and our consumer protection role generally.

¹ Available at www.asic.gov.au under 'Publications'.

History of ASIC's involvement

On 11 March 2002, as part of the Financial Services Reforms, the Government extended ASIC's consumer protection powers in relation to the regulation of financial services and products to include *credit*.

Since that date, ASIC and the ACCC have been jointly responsible for administering consumer protection legislation in relation to the debt collection industry, albeit in relation to different areas.

So what is ASIC's jurisdiction?

For a detailed explanation of the respective jurisdictions of ASIC and the ACCC in relation to debt collection, please refer to our joint publication *Complaints about debt collection activity – the responsibilities of Commonwealth agencies*². This can be downloaded from the ASIC and ACCC websites.

As a general guide, ASIC's jurisdiction covers situations in which the underlying debt relates to the provision of a financial service, including a credit facility, whereas debts in relation to the provision of goods and services other than financial services (for example, a phone bill) will fall within the jurisdiction of the ACCC.

Some examples of the types of debts that fall within ASIC's consumer protection jurisdiction, include

- **Fees for financial advice**
Collection of these debts will fall within ASIC's jurisdiction.
- **Credit card debts, loans or finance**
If the debt relates to the provision of credit, via a credit card, a loan, or a finance arrangement then the collection of the debt will fall within ASIC's jurisdiction.

It makes no difference whether the goods purchased are financial products, (for example, the payment of a financial adviser's fees), or consumer goods (like a washing machine).

Deferred payment occurs if there is a delayed or variable method of payment for goods. We are all familiar with adverts where the vendor offers 'no payments for 6 months' or '24 months interest free'. These are not finance arrangements and so unless the goods purchased happen to be financial products or services, the collection of these debts will fall within the jurisdiction of the ACCC.

² Available at www.asic.gov.au under 'Publications'.

ASIC's consumer protection role

I would also like to take a moment to outline ASIC's consumer protection role more generally, especially as many of you here may be involved in businesses or companies that come under ASIC's regulatory jurisdiction in one way or another.

As you may know, ASIC is responsible for the regulation and enforcement of laws that promote honesty and fairness in relation to all financial products and services, the financial markets, and the operation of Australian companies.

ASIC is concerned to ensure that Australian companies and financial services providers comply with their legal obligations. We fulfil this role in a number of different ways:

- We maintain a vigilant watch over the financial marketplace;
- We work together with industry;
- We enforce the law where necessary; and
- We are committed to consumer education and information strategies.

On the consumer education side, one of our most important focuses is our commitment to ensuring that consumers have access to accurate and impartial information, to enable them to make confident and informed financial decisions.

Our consumer website, FIDO, at www.fido.gov.au, has been specifically developed to provide information, safety checks and tips for consumers in relation to a range of financial topics. We have specific information on the site to help consumers dealing with their debts, for example tips on budgeting and how to manage your finances. The FIDO site also offers a number of powerful financial calculators and links to the electronic FIDO newsletter.

The consumer brochure

The consumer brochure *'Dealing with debt: your rights and responsibilities'*³, which we are pleased to be launching alongside the industry guideline, will be available to read or download on the FIDO site from today.

This brochure complements the content of the industry guideline. It is a readable, easy-reference document, which will provide consumers and community workers with basic guidance and tips about debt collection, and will help consumers to understand their rights and responsibilities. It also provides consumers with information about who to contact for help with debt problems, or if they are confronted with debt collection behaviour that they consider inappropriate.

³ Available at www.asic.gov.au under 'Publications'.

The brochure is intended to provide guidance to a range of people affected by the debt collection process, whether or not they owe the debt themselves. It contains practical advice about taking responsibility for debts, and acting as soon as possible to contact creditors or debt collectors to discuss repayment options.

We have also mirrored information contained in the guideline, which outlines what contact from a debt collector will be appropriate, and we have included specific examples of conduct that is likely to breach the provisions of either the *Trade Practices Act 1974* or the *Australian Securities and Investments Commission Act 2001* (the ASIC Act).

I realise, of course, that debt collectors are required to deal with consumers from all walks of life in going about their jobs. Many of these consumers may have a limited or non-existent understanding of the law or the debt collection process. And, as Louise indicated, it will often be the case that the consumer will know considerably less than the creditor or debt collector who contacts them.

Presumably then, debt collectors are often faced with questions from consumers regarding the debt collection process or requests for legal or other advice that it is not their responsibility to answer.

So please take a copy of this brochure, and familiarise yourself with its content, as well as the content of the guideline. It may be convenient for you to refer consumers to this document, or to provide them with a copy if it appears they may need some additional guidance.

Monitoring compliance

In addition to its consumer education focus, ASIC is concerned to ensure that any illegal conduct in relation to financial services or products is identified and acted upon.

ASIC is committed to assisting industry groups, like the debt collection industry, to comply with their legal obligations and adhere to industry standards. The development of the guideline we are launching today is just one example of how we work with industry in that regard.

However, no matter how much assistance, education and guidance we provide, in some cases it will be necessary for us to take regulatory action against those who flout their legal obligations, whether they are operating in the debt collection industry or elsewhere.

Since ASIC assumed its role as a joint regulator of the debt collection industry, it is fair to say that we have received a significant number of complaints regarding the conduct of debt collectors. I'd like to outline a couple of examples for you:

- **Example 1**

We received a complaint that a financial institution was using inappropriate tactics to obtain repayment of debts from its clients, for example telling a consumer that she was a criminal, a liar and that a sheriff would come around to her house and take her belongings.

She was also denied access to her bank account until she agreed to pay an outstanding payment.

- **Example 2**

Another complaint concerned the conduct of a collection company that continued contact in relation to a debt that was approximately 30-40 years old, even after being advised of the consumer's age and poor health.

The collection company advised the consumer that the matter would progress to legal proceedings.

- **Example 3**

Another complaint that a credit provider was refusing to provide information to the complainant to enable him to finalise his account.

Furthermore, the company who had bought the debt was harassing him but would not provide any information.

One specific area of concern that ASIC has identified – as illustrated in the second example – is the use of misleading conduct in the collection of statute-barred debts.

In January this year ASIC undertook a survey of mercantile agents, debt collectors and industry peak bodies with the specific aim of identifying how approaches to the collection of statute-barred debts had changed, if at all, since the decision of *Collection House Ltd v Taylor*⁴ in 2004.

The results of that survey are concerning in that they show that:

- the decision of *Collection House Ltd v Taylor*⁵ appears to have limited impact on the practices of the debt collection industry;
- there is widespread failure by industry to adopt processes to identify whether debts are statute-barred;
- there is widespread misunderstanding of laws relating to limitation regimes; and,

⁴ [2004] VSC 49.

⁵ *ibid.*

- those agencies that collect statute-barred debts are not doing enough to ensure that their conduct meets the standards set by law.

ASIC released a report on the results of that survey in September this year, entitled *Collecting statute-barred debts*⁶. One conclusion of the report is that the collection of statute-barred debts is an area that requires further regulatory attention from ASIC.

Regulatory action

You probably won't be surprised to learn, then, that ASIC has investigated a number of complaints against members of the debt collection industry.

While I am unable to provide specific details at this time, I can confirm that one such investigation, regarding allegations of misleading and deceptive conduct in the collection of statute barred debts, is nearing completion, and we expect an outcome in that matter shortly.

Meanwhile, I can only stress that ASIC takes its debt collection jurisdiction seriously. I therefore urge anyone involved in the collection of debts to familiarise themselves with their legal obligations and to maintain a strong focus on compliance with those obligations.

Closing remarks

In closing, I know that most of you here today would view those members of the debt collection industry who act inappropriately as 'bad apples'.

However, it is important to note that complaints received by ASIC indicate not only inappropriate behaviour by some debt collectors, but also in some cases a lack of understanding about their legal obligations.

ASIC believes that it can only be beneficial to the debt collection industry as a whole to eliminate illegal debt collection conduct.

The first step, of course, is to ensure that all members of the industry are aware of their obligations under the law. The new guideline and consumer brochure being launched today are an integral part of an overall process of developing a uniform standard of behaviour for the debt collection industry.

⁶ *Collecting statute-barred debts – An ASIC report* (September 2005) available at www.asic.gov.au under 'Publications'.