

#### ENFORCEABLE UNDERTAKING

#### Section 93AA Australian Securities and Investments Commission Act 2001

This Enforceable Undertaking is offered to the Australian Securities and Investments Commission by:

Avco Access Pty Ltd ACN 000 032 075 572 Swan Street Richmond VIC 3121

and

GE Automotive Financial Services ACN 004 187 419 572 Swan Street Richmond VIC 3121

and

GE Capital Finance Australia ACN 008 583 588 572 Swan Street Richmond VIC 3121

and

GE Personal Finance Pty Ltd
ACN 008 443 810
572 Swan Street Richmond VIC 3121

and

GE Finance Australasia Pty Ltd ACN 000 015 485 572 Swan Street Richmond VIC 3121

(together referred to as "the GE Money companies" in this Enforceable Undertaking)

#### 1. DEFINITIONS

- 1.1 The following defined terms are used in this Enforceable Undertaking:
  - "ACCC" means the Australian Competition and Consumer Commission;
  - "Act" means the Corporations Act 2001;
  - "ASIC" means the Australian Securities and Investments Commission;
  - "ASIC Act" means the Australian Securities and Investments Commission Act 2001;
  - "ASIC concerns" has the meaning given in clause 2.3.1;
  - "Beacon" means the computerised data capture and tracking system utilized by the

- GE Money companies to record customer complaints;
- "BFSO" means the Australian Banking and Financial Services Ombudsman;
- "BFSO Table" has the meaning given in clause 3.2.2;
- "Breaches" has the meaning given in clause 3.6;
- "Debt Collection Business" means the debt collection function maintained by the GE Money companies in respect of their cards, automotive and branch personal loans business;
- "eligible GE Money Customers" has the meaning given in clause 3.2.2;
- "First Action Plan" means the plan to be prepared by the GE Money companies in accordance with clause 3.6.2;
- "First Report" means the written report to be prepared by the Independent Consultant in accordance with clause 3.5.1;
- "First Review" means the review referred to in clause 3.2.1(a);
- "Further Assessment" means the further assessment under clause 3.2.3;
- "GE Money Reviews" means the reviews referred to in clause 3.2.1;
- "GE Money Statutory Declaration" has the meaning given in clause 3.7.4;
- "Independent Consultant" means the person required to be engaged by the GE Money companies in accordance with clause 3.5.1;
- "Investigation" means the ASIC investigation referred to in clause 2.2.7;
- "Regulatory Guidelines" means ASIC Regulatory Guide 96 ASIC/ACCC Debt collection guidelines: for collectors and creditors at Attachment 1 to the Enforceable Undertaking;
- "Reports" means the First Report and the Second Report;
- "Second Action Plan" means the plan (if any) to be prepared by the GE Money companies in accordance with clause 3.7.2;
- "Second Report" means the report (if any) to be prepared by the Independent Consultant in accordance with clause 3.5.1;
- "Submission" means the written submission provided to ASIC by the GE Money companies and dated 1 June 2007;
- "Terms of Appointment" means the terms set out in Attachment 2;
- "Two Year Review" means the review to be prepared by the Independent Consultant in accordance with clause 3.5.1;
- "22 June 2007 letter" means the letter of that date sent to ASIC on behalf of the GE Money companies in relation to the First Review;

1.2 The definitions used in the Terms of Appointment apply equally to this Enforceable Undertaking.

#### 2. BACKGROUND

#### 2.1 ASIC's role

2.1.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

#### 2.2 Relevant parties, events and statutory provisions

- 2.2.1 GE Money is the trading name of the GE Money companies which provide consumer finance products to individuals. The GE Money companies also conduct a debt collection business in respect of their cards, automotive and branch personal loans business ("Debt Collection Business").
- 2.2.2 The GE Money companies are part of the General Electric group of companies.
- 2.2.3 In the course of 2004 and 2005, ASIC received a number of complaints from, or on behalf of, individuals to whom the GE Money companies had provided credit. The complaints related to the practices engaged in by the GE Money companies and their representatives in respect of the Debt Collection Business.
- 2.2.4 Part 2 Division 2 of the ASIC Act (Part 2) contains provisions for consumer protection in relation to financial services.
- 2.2.5 Part 2 includes prohibitions that are relevant in the context of debt collection, including prohibitions against unconscionable conduct (sections 12CA and 12CB), misleading and deceptive conduct (section 12DA) and harassment and coercion (section 12DJ).
- 2.2.6 In or about July 2005, ASIC conducted surveillance on the GE Money companies and their compliance with the ASIC Act.
- 2.2.7 As a result of these enquiries, on 15 December 2006, ASIC commenced an investigation in relation to suspected contraventions of Part 2 and in particular section 12DJ.
- 2.2.8 ASIC acknowledges that the GE Money companies have:
  - a. co-operated with ASIC in the Investigation; and
  - b. between 2005 and 2006, reviewed their procedures and made substantive changes to their business including changes intended to address issues identified by ASIC.

#### 2.3 The ASIC concerns

- 2.3.1 Arising out of its enquiries and the Investigation, ASIC has the following concerns about the Debt Collection Business ("the ASIC concerns") namely that, in some cases:
  - the frequency of contact with debtors has been excessive and unreasonable;

- b. the hours of contact with debtors have been inappropriate including contact unreasonably early or late on any given day or contact on a day that a debtor has requested not to be contacted;
- the location of contact with debtors has been unreasonable including unnecessary contact with debtors at their place of employment;
- there has been unnecessary and unreasonable contact with third parties including family members, colleagues and neighbours;
- e. there has been an inflexible and unrealistic approach to repayment arrangements;
- f. there has been potentially coercive and intimidating conduct towards debtors including threats to take enforcement/debt recovery steps that were not able to be taken at the time those threats were made.

#### 2.4 Acknowledgment of the ASIC concerns

- 2.4.1 The GE Money companies acknowledge that there was in some cases a reasonable basis for ASIC's concerns and have therefore offered to ASIC the enforceable undertakings in the terms of clauses 3.2 to 3.11 below.
- 2.4.2 The GE Money companies acknowledge that should ASIC in its sole discretion form the view that the GE Money companies or any of them have failed to comply with this Enforceable Undertaking at any time then ASIC may, without limitation, take enforcement action including applying for court orders under s.93AA of the ASIC Act directing the GE Money companies or any of them to comply with the terms of this Enforceable Undertaking.

#### 3. UNDERTAKINGS

3.1 Under s.93AA of the ASIC Act, the GE Money companies have offered and ASIC has agreed to accept the following undertakings:

#### Compensation and ongoing complaint review

- 3.2 The GE Money companies undertake:
- 3.2.1 to identify each of the customers of the GE Money companies who may have been subject to conduct that is inconsistent with Part 2 and/or the ASIC/ACCC Debt Collection Guidelines in force at the time of the relevant conduct (including as described at clause 2.3.1.a.-f.) as follows:
  - a. in accordance with the review processes and criteria described in the 22 June 2007 letter and as further referred to in paragraph 8.3 of the Submission ("First Review"); and
  - b. in accordance with a further review to be undertaken by the GE Money companies in the same manner as the First Review of each of the complaints recorded in Beacon for the period 26 August 2006 to the date of this Enforceable Undertaking

(together "GE Money Reviews");

- 3.2.2 to take the steps set out in clause 3.3 to compensate each of the customers identified in accordance with the GE Money Reviews who were subject to conduct that is inconsistent with Part 2 and/or the ASIC/ACCC Debt Collection Guidelines in force at the time of the relevant conduct ("eligible GE Money customers"), by crediting to their account or payment of the amount determined by the GE Money companies in accordance with the "Non-Financial Loss Assessment Table: Debt Collection" prepared by the BFSO and attached to this Enforceable Undertaking marked Attachment 3 ("the BFSO Table");
- 3.2.3 that in circumstances where any eligible GE Money customer is not satisfied with the offer of compensation determined by the GE Money companies to be payable in accordance with clause 3.2.2 to then promptly undertake a further internal assessment of the relevant claim to compensation, in each case to be made by a GE employee or representative of more senior grade or rank than the person who made the relevant determination referred to in clause 3.2.2 and again in accordance with the BFSO Table ("Further Assessment").

Compensation in respect of the GE Money Reviews

- 3.3 The GE Money companies further undertake (as applicable) to:
- 3.3.1 determine the amount of compensation referred to in clause 3.2.2 in respect of the GE Money Reviews within thirty (30) days of the completion of the GE Money Reviews, which must be undertaken with reasonable expedition;
- 3.3.2 dispatch notification of the offer of that compensation in respect of the GE Money Reviews within fifty one (51) days of completion of the GE Money Reviews;
- provide that compensation in the manner set out in the 22 June 2007 letter within ten (10) business days of the eligible GE Money customer's advising that he or she accepts that offer of compensation and providing appropriate confirmation of his or her identity and current address;
- carry out any further assessment and make any further offer, or advise the relevant GE Money customer that no change will be made to the previous offer, within twenty eight (28) days of being advised by any of the eligible GE Money customers that the offer of compensation made pursuant to clause 3.3.2 is not acceptable to that customer. Any such advice will draw the customer's attention to his or her right to have the matter reviewed by BFSO if he or she is not satisfied with the further offer.
- 3.3.5 ensure that all relevant GE Money customers are advised of relevant time-limits and procedures arising out of clauses 3.3.1 3.3.4; and
- 3.3.6 provide all relevant information to BFSO regarding eligible GE Money customers who seek to have the matters dealt with in this clause referred to BFSO.
- 3.4 The GE Money companies further undertake to:
- 3.4.1 adhere to the BFSO Table in their future handling of all relevant customer complaints made in relation to the Debt Collection Business including those relating to past conduct;
- 3.4.2 continue to fully maintain and adequately resource the operations of Beacon or any such system as may replace it from time to time; and

- 3.4.3 maintain complaint handling procedures including:
  - (i) documented policies and procedures relating to complaint handling;
  - (ii) membership of an external dispute resolution scheme approved by ASIC;
  - (iii) staff dedicated to the resolution of customer complaints and matters escalated for further review; and
  - (iv) a customer hotline.

#### Independent review of the Debt Collection Business

- 3.5 The GE Money companies undertake:
- 3.5.1 to appoint, within thirty (30) days of the date of this Enforceable Undertaking, an Independent Consultant to review, assess, make recommendations and provide the First Report, the Second Report (if required under clause 3.6) and the Two Year Review to the GE Money companies in accordance with the Terms of Appointment;
- 3.5.2 to obtain ASIC's approval in writing prior to the appointment of the Independent Consultant and for this purpose, as soon as reasonably practicable and in any event within twenty-one (21) days of the date of this Enforceable Undertaking, to provide to ASIC the curricula vitae, including details of the expertise and any prior associations with GE Money, of:
  - a. any proposed Independent Consultant; and
  - any person or persons who will assist any Independent Consultant in the preparation of the Reports and the Two Year Review;
- 3.5.3 that the appointment of the Independent Consultant will be on the Terms of Appointment save that, subject to clause 3.5.4, additional terms which are not inconsistent with the Terms of Appointment may also be included by the GE Money companies;
- 3.5.4 that they will not vary the Terms of Appointment except with the prior written approval of ASIC;
- 3.5.5 that the GE Money companies shall be responsible for the negotiation and discharge of all remuneration and costs properly associated with the appointment of the Independent Consultant;
- 3.5.6 that a copy of the signed and countersigned Terms of Appointment will be provided to ASIC within two (2) days of becoming effective;
- 3.5.7 to provide all reasonable and timely assistance to the Independent Consultant for the purposes of the preparation of the Reports (as applicable) and the Two Year Review; and
- 3.5.8 to provide ASIC with a copy of the Reports (as applicable) and the Two Year Review within two (2) days of their respective receipt from the Independent Consultant.

#### The First Action Plan

3.6 The GE Money companies further undertake that, if the First Report identifies either:

- a. a failure to comply with the Regulatory Guidelines in the Debt Collection Business; and/or
- b. deficiencies in the operation of the Debt Collection Business as described in the ASIC concerns;

#### (together " Breaches"):

- 3.6.1 to consider the recommendations made by the Independent Consultant in the First Report to remedy the Breaches;
- within thirty (30) days of the date that the First Report is received by the GE Money companies, to provide to ASIC and to the Independent Consultant the First Action Plan which is to set out the steps the GE Money companies propose to take to rectify the Breaches and further specify the timeframes within which those steps will be taken;
- 3.6.3 to implement the First Action Plan in respect of the Debt Collection Business within the timeframes specified in the First Action Plan unless ASIC reasonably requests any modifications to the First Action Plan within thirty (30) days of its receipt of the First Action Plan. In this case, the GE Money companies must then implement the First Action Plan in respect of the Debt Collection Business as so modified within the timeframe reasonably specified by ASIC; and
- 3.6.4 to confirm to the Independent Consultant that a further review and assessment of the Debt Collection Business is to be carried out, in accordance with the Terms of Appointment, for the purposes of:
  - a. reviewing the implementation of the First Action Plan in the Debt Collection Business;
  - otherwise preparing the Second Report in accordance with paragraph 3.4 of the Terms of Appointment; and
  - if necessary making further recommendations in respect of the Debt Collection Business.
- 3.6.5 For the avoidance of doubt, clauses 3.6.1-3.6.4 do not apply unless the First Report identifies Breaches as set out in clause 3.6a-b.

#### Second Action Plan

- 3.7 If the Second Report identifies further or repeated Breaches in the Debt Collection Business then the GE Money companies further undertake:
- 3.7.1 to consider the further recommendations made by the Independent Consultant in the Second Report to remedy the Breaches;
- 3.7.2 within thirty (30) days of the date that the Second Report is received by the GE Money companies, to provide to ASIC and to the Independent Consultant the Second Action Plan setting out the steps the GE Money companies propose to take to rectify the said further or repeated Breaches and specifying the timeframes within which those steps will be taken;
- 3.7.3 to implement the Second Action Plan in respect of the Debt Collection Business

within the timeframes specified, unless ASIC reasonably requests any modifications to the Second Action Plan, within thirty (30) days of its receipt of the Second Action Plan. In that case the GE Money companies must then implement the Second Action Plan as so modified within the timeframe reasonably specified by ASIC; and

- 3.7.4 to provide a further report to ASIC, within a timeframe that ASIC shall reasonably advise, in the form of a statutory declaration made by either:
  - a. a managing director of the GE Money companies; or
  - b. such other person as shall be agreed to in writing by GE Money and ASIC

detailing the material steps which have been taken to implement the Second Action Plan and the outcome of such steps to the best of that person's knowledge after making reasonable inquiries (the "GE Money Statutory Declaration") which ASIC shall then consider for the purpose of it taking any further or other steps it may in its discretion consider necessary so as to perform its statutory functions.

3.7.5 For the avoidance of doubt, clauses 3.7.1-3.7.4 do not apply unless the Second Report identifies breaches as set out in clause 3.6(a)-(b).

#### Materiality

3.7A For the avoidance of doubt, the Consultant is not required in the Reports or the Two Year Review to report upon matters relevant to any deficiencies identified during the reviews which the Consultant shall carry out pursuant to clauses 3.5 - 3.8 which are, in his or her sole professional opinion, immaterial or insignificant.

#### Two Year Review

- 3.8 The GE Money companies further undertake to consider the terms of the Two Year Review and, if applicable, within twenty-eight (28) days of its receipt from the Independent Consultant to provide to ASIC a written statement which contains their proposals to address:
  - a. any failure to comply with the Regulatory Guidelines in the Debt Collection Business or deficiency in the operation of the Debt Collection Business as described in the ASIC concerns; and
  - b. any default in the steps taken pursuant to the GE Money Statutory Declaration (if any)

which is/are indicated by or contained in the Two Year Review.

#### **Industry Workshop**

- 3.9 The GE Money companies undertake to arrange or supervise (as the GE Money companies shall elect) within twelve (12) months of the date of this Enforceable Undertaking an educational workshop open to up to 100 persons who are not employed by the GE Money companies working within or in association with the debt collection and credit finance industry in Australia that will be:
  - a. paid for by the GE Money companies;
  - b. principally concerned with promoting best practice within the debt collection

and credit finance industry in Australia;

- c. a minimum of one business day in duration; and
- d. approved by ASIC in advance (such approval not to be unreasonably withheld) as to:
  - i its location;
  - ii its content; and
  - iii. its promotion.

#### Replacement of Independent Consultant

- 3.10 If the appointment of the Independent Consultant is terminated in accordance with paragraph 4 of the Terms of Appointment or if the Independent Consultant resigns or otherwise terminates his or her appointment then the GE Money companies undertake that they will:
  - a. advise ASIC of any matters relevant to such termination of which it is or may be unaware;
  - b. promptly take all steps necessary to procure the appointment of a new Independent Consultant in accordance with clauses 3.5.3 to 3.5.7; and
  - c. advise ASIC of the extent to which the timetable(s) contained in this Enforceable Undertaking have been affected, so that ASIC can consider whether this Enforceable Undertaking requires variation.

#### Costs and ASIC powers

- 3.11 The GE Money companies undertake to pay the costs of their compliance with this Enforceable Undertaking.
- 3.12 GE acknowledges that from time to time ASIC may exercise its statutory information gathering powers to compel production of information and/or books and records in relation to compliance with this Enforceable Undertaking.

#### 4 ACKNOWLEDGMENTS

- 4.1 The GE Money companies acknowledge that ASIC:
  - a. may issue a media release on execution of this Enforceable Undertaking referring to its terms and to the ASIC concerns which led to its execution;
  - b. may from time to time publicly refer to this Enforceable Undertaking; and
  - c. will make this Enforceable Undertaking available for public inspection.
- 4.2 The GE Money companies further acknowledge that:
  - a. ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention arising from conduct not described or referred to in clauses 2.2

and 2.3 or arising from future conduct; and

- that this Enforceable Undertaking in no way derogates from the rights and ъ. remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking or arising from future conduct.
- The GE Money companies further acknowledge that this Enforceable Undertaking 4.3 tive force until accepted by ASIC, and the GE Money companies and

ASIC acknowledge that the start date which it is accepted by ASIC.	e of this Enforceable Undertaking is the date on
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EXECUTED by GE CAPITAL FINANCE	E AUSTRALIA ACN 008 583 588 in accordance

with section 127(1) of the Corporations Act 2001 in the presence of:

Signature of director

Name of director (print)

Signature of director/company secretary

Vincent A. Erardi Name of directoriconiany secretary (print)

EXECUTED by GE PERSONAL FINANCE PTY LTD ACN 008 443 810 in accordance with section 127(1) of the Corporations Act 2001 in the presence of:			
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Michael T. WHC Name of director (print)	Name of director/company secretary (print)		
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Signature of director	Signature of director/company secretary Vincent A. Erardi		
Midwel T. Cutter  Name of director (print)	Name of director/company secretary (print)		
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Accepted by the Australian Securities and Investments Commission under section 93AA of the ASIC Act by its duly authorised delegate:			
[insert name] JAN REDFERN  Delegate of Australian Securities and Investments Commission  Dated: 2000			
Dated: 22 nd May 200	, <b>%</b>		





ASIC

Australian Securities & Investments Commission

## REGULATION (GUIDES)

# Debt collection guideline: for collectors and creditors

October 2005







**Debt collection guideline:** for collectors and creditors

OCTOBER 2005

Debt collection guideline:
for collectors and creditors

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#### Important notice

This guideline is designed to give you basic information; it does not cover the whole of the Trade Practices Act or the Australian Securities and investments Commission Act and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be generalisations about the application of the aforementioned Acts. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining how these Acts apply to that conduct.

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## Part 1: Using this guideline

This guideline has been produced by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and investments Commission (ASIC). The ACCC and ASIC enforce the Commonwealth consumer protection laws. For more information about the responsibilities of each agency, see appendix A.

In this guideline the terms 'debt' and 'debtor' are used to include alleged debts and alleged debtors respectively (see the glossary in appendix C for more on terms and phrases).

# Who is this guideline for?

This guideline will help:

- collectors (including collection agencies, debt buy-out services, in-house collection departments of businesses and government bodies, solicitors and others)
- creditors who use external collection agencies to collect debts or sell or assign debts to third parties

to understand how the Commonwealth consumer protection laws apply to them.

The guideline will also serve as a point of reference for financial counsellors and debtors' advisers when negotiating with collectors about their practices. The ACCC and ASIC have developed a joint publication specifically for consumers called *Dealing with debt: your rights and responsibilities.*\(^1\)

<sup>1</sup> This publication is available on the ACCC and ASIC websites. A hard copy is also available free of charge by contacting either ASIC or the ACCC (contact details in appendix A).

## What this guideline covers

This guideline explains how Commonwealth consumer protection laws relevant to collection apply. These laws include:

- Parts IVA and V of the Trade Practices Act 1974
- Part 2, Division 2 of the Australian Securities and Investments Commission Act 2001 (ASIC Act).

Part 2 of the guideline provides practical guidance on what collectors and creditors should and should not do to minimise the risk of breaching the laws administered by ASIC and the ACCC.

Part 3 of the guideline looks at the prohibitions and remedies against debt collectors who engage in:

- the use of physical force, undue harassment or coercion
- misleading or deceptive conduct
- · unconscionable conduct.

#### **Penalties**

Part 3 also contains information on penalties for breach of the Commonwealth consumer protection laws.

#### Other laws

This guideline also refers to other laws and regulations not administered by the ACCC and ASIC, but which are relevant to debt collection. These include:

- Commonwealth privacy laws—administered by the Office of the Privacy Commissioner
- state and territory fair trading laws—which include conduct prohibitions mirroring those of the Commonwealth consumer protection laws
- the Uniform Consumer Credit Code—uniform state and territory legislation administered by the state and territory fair trading and consumer affairs agencies
- the Bankruptcy Act 1966—administered by the Insolvency Trustee Service Australia.

Various other laws, regulations and industry codes are also referred to in passing throughout the guideline. For a non-exhaustive list of other applicable laws, see appendix B. Also see the comments under the heading, Relationship with court debt recovery processes' on p. 6.

Note: this guideline does not seek to deal with law on mortgages and other securities or guarantees.

# Why has this guideline been developed?

This guideline replaces the ACCC's Debt collection and the Trade Practices Act published in June 1999. Since then, ASIC has become responsible for consumer protection in financial services.<sup>2</sup> ASIC and the ACCC now share responsibility at the Commonwealth level for protecting people who are debtors or alleged debtors from unacceptable collection conduct.

This guideline reflects the joint responsibilities of the ACCC and ASIC for collection activity. It also takes account of:

- recent cases that interpret the law governing debt collection<sup>3</sup>
- · changes to the structure and practices of the collection industry in recent years
- stakeholder feedback after consultation about the guideline.

# What does this guideline do?

#### The guideline:

- explains ASIC's and the ACCC's view of the laws that we administer
- · provides examples on how the law has been applied in particular cases
- gives guidance on what creditors and collectors should and should not do
  if they wish to minimise the risk of breaching the laws we administer
- notes other laws and regulations not administered by the ACCC and ASIC that are relevant to the debt collection context.
- 2 ASIC's role is set out in the Australian Securities and Investments Commission Act 2001, the Corporations Act 2001 and other legislation. See also appendix A of this guideline.
- 3 See references in part 3 of this guideline.

#### Note:

- This guideline does not have legal force. ASIC and the ACCC cannot make law in this field—that is the role of parliament. Nor can ASIC and the ACCC provide a definitive interpretation of the law—that is the role of the courts.4
  - ASIC and the ACCC must approach each potential enforcement matter on a case-by-case basis, taking account of all relevant circumstances. Compliance with this guideline cannot provide a guarantee against enforcement action by ASIC or the ACCC.
  - Businesses may also be subject to action by private parties.

The ACCC and ASIC encourage businesses engaging in collection activity to follow this guideline and incorporate it into their staff training, both in terms of the text and the spirit of the document.

# This guideline focuses on individual debtors

The guideline has been developed with particular reference to collecting debts from individual debtors. However, many of the laws and principles discussed will also be relevant to the collection of corporate or business debts.

# This guideline applies to creditors as well as collectors

This guideline applies to creditors directly involved in debt collection as much as to specialist external agencies. When a creditor uses an agent for collection, the creditor (as principal) will generally be liable for their agent's conduct when that conduct comes within the agent's express, implied or ostensible authority.

- Although this guideline does not have legal force, it should be noted that
  - A creditor or collector may agree contractually to adhere to this guideline. This will be the case, for instance, if the terms and conditions for a particular product or service stipulate that the provider of the service will abide by the guideline itself, or by an industry code of conduct requiring compliance with the guideline. In these circumstances, provisions of the guideline may be legally enforceable by the debtor on the basis of the creditor's contractual undertaking.
  - Industry complaints handling schemes may consider this guideline when making binding determinations on scheme members. See further under part 2, section 23, "The role of independent external dispute resolution schemes".

A creditor may be responsible for their agent's collection activities even if the agent acts in a way that is contrary to an agreement or understanding between the creditor and agent about how the collection is to be undertaken.

A creditor may also remain liable for conduct regarding a debt despite having sold or assigned the debt. Liability will generally remain for misconduct occurring before the sale or assignment of the debt.

The ACCC and ASIC encourage creditors to use this guideline to ensure their in-house collection activities are compliant with the laws we administer, and to incorporate this guideline into their contractual and compliance auditing arrangements with their agents and assignees.

# Debtors' responsibilities

While this guideline focuses on the responsibilities of collectors, the ACCC and ASIC recognise that debtors have responsibilities too. Debtors are legally responsible for paying the debts they legitimately owe, and they should not deliberately try to avoid their obligations.

Whenever possible, debtors should take action before they get into difficulties. Debtors experiencing financial hardship should promptly contact their creditor, or the collector if the debt has already passed to a collection business, to negotiate a variation in payments or other arrangement. In seeking a variation, debtors should be candid about their financial position, including their other debts.

We also recommend that debtors in difficulties consider seeking the assistance of a community-based financial counsellor, solicitor or other qualified adviser who may be able to help them with a debt negotiation.

The ACCC and ASIC's Dealing with debt: your rights and responsibilities gives consumers detailed advice on dealing with debt matters. We encourage creditors and collectors to refer debtors to this publication and to the services referred to in the paragraph above when appropriate.

# Relationship with court debt recovery processes

Broadly, debts may be recovered either through the courts, or by using creditor or collection agency personnel to negotiate repayments. Debt recovery through the courts is largely regulated by state and territory law and the procedural rules of the courts. The recovery process may also include the repossession of securities or other legal enforcement of security interests.

This guideline is mainly concerned with non-court debt recovery processes and informal collection activities after a judgment. It does not claim to limit a creditor's right to:

- conduct legal repossession activities and other legal enforcement of legitimate security interests
- seek and obtain pre-judgment remedies, for example, orders to prevent the removal or transfer of property from the jurisdiction
- seek and obtain judgment for a debt
- enforce judgment through a court process—including examination hearings, instalment orders, orders for the seizure and sale of property, garnishment or attachment orders
- undertake all necessary procedures (for example, for serving documents) associated with these actions.

However, a collector must not threaten action (legal or otherwise) that they are not legally permitted to take, or do not have instructions or authority to take. How legal action is threatened or employed can, in certain circumstances, amount to unconscionable conduct or harassment. A collector also must not represent an entitlement to seize goods beyond that granted by law. See part 2, sections 19–21 of this guideline for more information.

Read this guideline keeping in mind the rights given by, and obligations imposed by the courts under debt recovery and other laws.

# A flexible, fair and realistic approach to collection

People often default on their debts as a result of circumstances beyond their control—such as unemployment, illness and family breakdown. While there are cases of fraud and deliberate evasion, most people are honest and want to meet their commitments if given a reasonable opportunity to do so.

On the other hand, most creditors want to minimise their exposure to debt collection and, to this end, most will be prepared to work flexibly with customers who get into difficulties. We encourage such flexibility on the part of creditors and their agents. This includes making reasonable allowance for a debtor's ongoing living expenses, and recognising that debtors experiencing financial hardship will often have a number of debts owing to different creditors.<sup>5</sup>

When debtors act promptly and responsibly, and collectors are flexible, fair and realistic, the need for collection activity will be greatly reduced.

# Roles of ASIC and the ACCC

For more information on the respective roles of ASIC and the ACCC for debt collection see appendix A of this guideline.

<sup>5</sup> Note that when a debt relates to a contract regulated by the Uniform Consumer Credit Code (administered by the states and territories), a debtor may have a statutory right to a variation when certain conditions are met. Repayment negotiations generally, including hardship variations under the UCCC, are discussed in part 2, section 13 of this guideline.

# Part 2: Practical guidance

In this guideline, the term 'debtor' includes an alleged debtor, and the term 'debt' includes an alleged debt.

### Who is this part addressed to?

This part of the guideline is addressed directly to all involved in collection activity, whether as creditors, agents or assignees [you]. Reference is also made to the specific responsibilities of creditors of contracted or assigned debts.

# Contact for a reasonable purpose only

- [a] Communications with the debtor must always be for a reasonable purpose, and should only occur to the extent necessary.
- [b] It may be necessary and reasonable for you to contact a debtor to:
  - give information about the debtor's account
  - convey a demand for payment
  - accurately explain the consequences of non-payment, including any legal remedies available to the collector/creditor, and any service restrictions that may apply in the case of utilities (for example, electricity)
  - make arrangements for repayment of a debt
  - put a settlement proposal or alternative payment arrangement to the debtor
  - review existing arrangements after an agreed period
  - ascertain why earlier attempts to contact the debtor have not been responded to within a reasonable period, if this is the case
  - ascertain why an agreed repayment arrangement has not been complied with,
     if this is the case
- 6 You should also not pursue a person for a debt unless you have reasonable grounds for believing the person you contact is liable for the debt see section 12 of part 2 of this guideline.

- investigate whether the debtor has changed their residential location without informing you, when there are grounds for believing this has occurred
- sight, inspect or recover a security interest

or for other similar purposes.7 You may also contact a debtor at the debtor's request

- [c] However, it is not reasonable or acceptable to contact a debtor to:
  - frighten or intimidate the debtor
  - · demoralise, tire out or exhaust the debtor
  - · embarrass the debtor in front of other people

or for other similar purposes.8 See further under part 2, section 16 and part 2, section 17 of this guideline.

# 2. Making contact with the debtor

- [a] Under the privacy laws, collectors have obligations to protect the privacy of debtors. When making direct contact, your first task must always be to ensure the person you are dealing with is the debtor. This must be done every time you make contact before you divulge any information about the debt, the process for its recovery or other confidential information.
- [b] If you are considering divulging your identity as a collector before being sure that you are dealing with the debtor (for example, if requested by the person you are dealing with), then you may do so if that would not have the effect of divulging information such as that the debtor has a debt.
- [c] The limits on disclosing information to third parties apply to the debtor's spouse, partner and/or family as much as they apply to other third parties.<sup>16</sup>
- [d] Having established the debtor's identity, you should then identify who you are and whom you work for, and explain the purpose of the contact.

<sup>7</sup> However, there are circumstances when further contact with a debtor may not or may no longer be appropriate: see part 2, sections 4, 12 and 14-15 of this guideline.

<sup>8</sup> Note also that 'unreasonable communication with a debtor' is specifically prohibited as undue harassment or coercion by s. 26(2)(i) of the Fair Trading Act 1992 (ACT) and s. 21(2)(h) of the Fair Trading Act 1999 (Vic.).

<sup>9</sup> Privacy related guidance in this section has been written with advice from the Office of the Privacy Commissioner (Federal). For information on privacy issues, see part 2, section 7 of this guideline.

<sup>10</sup> For authorised representatives, see part 2, section 8 of this guideline.

- [e] When you make initial contact, you should also give at least basic information about the debt, including the name of the creditor and any assignee of the debt, and details of the account and the amount claimed. A debtor may request further information or documentation of the debt: see part 2, section 10 of this guideline.
- [f] Do not misrepresent your identity in any way—for example, do not falsely state or imply that you are or work for a solicitor, or are a court or government official.
- [g] If on first contact the debtor denies liability for the debt or raises an issue indicating a dispute about the debt, you should also take the steps referred to in part 2, section 12 of this guideline.

# 3. Hours of contact

[a] Only contact the debtor or a third party at reasonable hours, taking into account their circumstances and reasonable wishes. You can normally assume that the following are appropriate contact times, subject to the qualifications set out:

#### Reasonable contact times

These times apply to both debtors and third parties<sup>11</sup> and are the local times in the debtor's state or teiritory.

	Separate the second
Monday to Friday	7.30 am-9.00 pm
Weekends	9.00 am-9.00 pm
National Public	No contact
Holidays	recommended12
Monday to Friday	9.00 am-9.00 pm
Weekends	9.00 am-9.00 pm
National Public	No contact
Holidays	recommended13
Debtor's normal work	ing hours if known, or
9.00 am-5.00 pm on w	eekdays
	National Public Holidays Monday to Friday Weekends National Public

<sup>11</sup> See definition of 'third party' in appendix C. Contact with debtors' representatives such as financial counsellors and solicitors would normally occur during ordinary business hours.

<sup>12</sup> It will generally be inappropriate to contact debtoxs on New Year's Day, Australia Day, Good Friday, Easter Sunday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day.
Contact may also be prohibited on other days in particular jurisdictions. For instance, s. 43 of the Fair Trading Act (SA) prohibits telephone calls or personal calls on any public holiday (state or national) to demand payment.

<sup>13</sup> ibid.

- [b] We assume that contact will usually be by telephone. The above contact times for face-to-face contact, including contact at the debtor's workplace, need to be read in conjunction with the comments on face-to-face contact in part 2, section 6 of this guideline.
- [c] Also, there may be reasons why contact during the above times is unreasonable, or contact outside of these times is reasonable. For instance, a debtor may ask that contact be made at other or more restricted times. This may be for a range of reasons, for example (these examples are illustrative only):
  - · the debtor is a shift worker
  - the debtor is responsible for children and contact around meal times is not convenient
  - the debtor does not wish to be contacted when other family members are present.

In these and other such cases, the reasonable wishes of the debtor should be respected, and contact limited to the times requested by the debtor.

[d] However, a collector may alter the time of contact if, after reasonable efforts over a reasonable period of time to contact the debtor during normal hours or at the times requested by the debtor, the collector has not been able to do so.

# 4. Frequency of contact

- [a] Debtors and third parties are entitled to be free from excessive communications from collectors. Communications must always be for a reasonable purpose, and should only occur to the extent necessary: see part 2, section 1 of this guideline. The guidance on frequency of communications that follows (section 4) should be read subject to this general principle.
- [b] References to the number of contacts with debtors should be read as the number of contacts per account, rather than per individual debtor. It may be acceptable to have a higher overall level of contact with an individual debtor if this contact relates to more than one account. Where possible, however, collectors should seek to discuss multiple accounts with a debtor during the one contact to avoid unnecessary communications.

#### Telephone contacts, letters and messages

[c] Unnecessary or unduly frequent contacts may amount to undue harassment of a debtor. We recommend that you do not contact a debtor more than three times per week, or 10 times per month at most (when contact is actually made) and only when it is necessary to do so.<sup>14</sup>

#### This contact includes:

- speaking to the debtor by telephone—including contacts when the debtor terminates the call
- · letters sent to the debtor.
- [d] Unnecessary or unreasonable contact by email, SMS or telephone messages (whether left on a voicemail service, on an answering machine or with a third party) must also be avoided.
- [e] Stop contacting efforts once you have reached the above limits unless the debtor asks for the contact, or there is some other legitimate reason for making further contact (for example, if you are in the process of negotiating an agreement with a willing debtor).
- f) Once you have made contact, leave a reasonable interval before next contacting the debtor. Give the debtor time to respond to your previous communications, and/or to organise payments if this has been agreed.

#### Face-to-face contacts

[g] See our comments in part 2, section 6 on when face-to-face contact with the debtor is appropriate. You should only make face-to-face contact when such contact is necessary and reasonable. In such cases, we recommend that you do not make more than one face-to-face contact with a debtor per fortnight (if contact with the debtor actually takes place). 15

<sup>14</sup> Note that s. 31(2) of the Property and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulation 2001 (Qld) prohibits unsolicited communication with a debtor more than twice 2 week.

<sup>15</sup> In ACCC v Esanda Finance Corporation Ltd [2003] FCA 1225, the court ordered the defendant to restrict its agents to a total of five personal visits [for the period of collection] unless a visit was specifically requested by the customer or a repayment agreement had been made and subsequently breached (in which case a further five visits may be made).

#### Third parties

[h] We recommend that you do not contact a third party to obtain location information more often than once every six months. An exception is when permission to make further contact has been sought and given in advance by the third party. Contact with third parties is discussed more generally in part 2, sections 7 and 18 of this guideline.

#### Undue harassment

[1] Unduly frequent contact designed to wear down or exhaust a debtor, or likely to have this effect, constitutes 'undue harassment' or coercion and must be avoided. This is particularly likely if the collector makes a number of phone calls or other contacts in rapid succession. The specific prohibition against undue harassment is discussed further in part 3 of this guideline.

#### Undue harassment explained

Justice Hill of the Federal Court has explained the meaning of undue harassment as follows:

The word harassment means in the present context persistent disturbance or torment. In the case of a person employed to recover money owing to others ... it can extend to cases where there are frequent unwelcome approaches requesting payment of a debt. However, such unwelcome approaches would not constitute undue harassment, at least where the demands made are legitimate and reasonably made. On the other hand where the frequency, nature or content of such communications is such that they are calculated to intimidate or demoralise, tire out or exhaust a debtor, rather than merely convey the demand for recovery, the conduct will constitute undue harassment... Generally it can be said that a person will be harassed by another when the former is troubled repeatedly by the latter. The reasonableness of the conduct will be relevant to whether what is harassment constitutes undue harassment.

ACCC v The Maritime Union of Australia [2001] FCA 1549

# 5. Location of contact

- [a] In most cases, the debtor's home will be the appropriate place to contact a debtor, with contact by letter or telephone generally being the appropriate mode of contact. However, if a debtor provides a telephone (including mobile phone) contact number as the means of contact, contact using that number will be appropriate whatever the debtor's location. Face-to-face contact is considered in the next section.
- [b] Sometimes, a debtor may not wish to be contacted at their home. If the debtor provides an alternative and reasonable location for contact and is able to be contacted at that location, the debtor should not be contacted at home.
- [c] Contact must not involve a breach of your privacy obligations to the debtor—see part 2, section 7 of this guideline.

## 6. Face-to-face contact

- [a] We recommend that collectors only make personal or 'field' visits if reasonable efforts to contact a debtor by other less intrusive means have been unsuccessful and face-to-face contact is necessary.
- [b] Making a personal visit may be justified when a debtor refuses or fails to respond to other means of communication. Face-to-face contact may also be justified to verify the identity or location of a debtor when this is reasonably in doubt.
- [c] Note—this guidance is not intended to limit otherwise legally permissible visits:
  - to sight, inspect or recover security interests
  - for the serving of legal process
  - for the enforcement of court orders by officers appropriately authorised by the relevant court.

#### Visiting the debtor's home

- [d] Visits to a person's home will often raise issues about the privacy of the debtor and/or third parties. This subsection should be read in conjunction with part 2, section 7. This subsection should also be read in conjunction with part 2, section 18 of this guideline.
- [e] We recommend the following when visiting a debtor's home:
  - Generally, do not visit the debtor's home uninvited when it is possible to ask
    permission to visit the debtor. If the debtor refuses the visit, you must not
    visit them.<sup>16</sup>
  - · State clearly to the debtor the purpose of any visit before making the visit.
  - Negotiate a mutually convenient time for the visit. We recommend that
    visiting times be consistent with the reasonable contact times set out
    in part 2, section 3, unless the debtor agrees to another time.
  - Before the visit takes place, allow the debtor time to seek advice, support and/or the presence of a third party if they choose.
  - Do not visit the debtor's home if you know of special circumstances
    (for example, the debtor is seriously ill or mentally incapacitated) which
    would make face-to-face contact inappropriate. Leave the debtor's premises
    immediately if you become aware of such circumstances during the visit.
- [f] You must leave the debtor's premises immediately if, at any time, you are asked to do so. As well as breaching the prohibition on undue harassment and coercion<sup>17</sup> refusing to leave someone's property on request is likely to constitute a breach of civil or criminal trespass laws. This applies to service or trades people claiming they are not permitted to leave a consumer's residence without receiving payment.
- [g] Whether before or after visiting a debtor, or at any other time, do not stay in the vicinity of the debtor's home for an extended period of time or engage in any other conduct that may suggest to the debtor or a third person that the debtor or a member of the debtor's household is under surveillance.

<sup>16</sup> If you enter the debtor's premises when instructed not to do so, you risk breaching civil or criminal trespass laws.

<sup>17</sup> In Victoria, the failure to leave a person's private residence when requested to do so is deemed to constitute undue harassment or coercion under s. 21(2)(k) of the Fair Trading Act 1999 (Vic.).

#### Visiting the debtor's workplace

- [h] Visiting a debtor's workplace should only be undertaken as a last resort unless:
  - the debtor is the proprietor or a director of a business to which the debt relates
  - · the debtor has specifically requested or agreed to the visit.
- [1] If a debtor has asked that you do not visit them at their workplace, and has provided an alternative and effective means of communication, do not visit them at their workplace.
- Visiting a debtor at their workplace will always involve a risk of breaching the collector's privacy obligations to the debtor. 18 Collectors will generally be asked to explain who they are and why they are visiting, and it will generally be difficult to provide an explanation without giving confidential information to third parties.
- [k] Visiting a debtor at their workplace uninvited may also be seen as an attempt to put pressure on the debtor by embarrassing or threatening to embarrass them in front of work colleagues. If this is found to have occurred, such conduct is likely to constitute undue harassment or coercion of the debtor.
- Il If you do visit a debtor's workplace:
  - under no circumstances reveal to a third party, whether directly or indirectly, that the visit is in connection with a debt<sup>29</sup>
  - under no circumstances discuss the debt in front of co-workers<sup>20</sup>
  - leave immediately if, at any time, you are asked to do so by the debtor or another person.<sup>21</sup>
- [m] A visit to a debtor's workplace should be undertaken when you know the debtor will normally be at work. If you do not know the debtor's working hours, we recommend that you limit any visit to between 9 am and 5 pm on weekdays.
- [n] Whether before or after visiting a debtor, or at any other time, do not stay in the vicinity of the debtor's workplace for an extended period, or engage in any other conduct that may suggest to the debtor or a third person that the debtor is under surveillance.

<sup>18</sup> See part 2, section 7 of this guideline.

<sup>19</sup> ibid.

<sup>20</sup> ibid

<sup>21</sup> If you do not leave the debtor's workplace when asked to do so, you risk breaching tort and/or criminal trespass laws. Also, in Victoria, the failure to leave a person's workplace when requested to do so is deemed to constitute undue harassment or coercion under s. 21(2)(k) of the Fair Trading Act 1999 (Vic.).

# 7. Privacy obligations to the debtor and third parties

The following information on collectors' privacy obligations has been written with advice from the Office of the Privacy Commissioner (Federal), which has responsibility for privacy regulation at the Commonwealth level.22

[a] A debtor's personal information should always be treated with respect. The improper use of a debtor's personal information may cause that person serious difficulties. There are legal obligations under the Privacy Act 1988 (Cwlth) (the Privacy Act) designed to protect the privacy of a debtor's personal information.

Personal information means information or an opinion, whether it is true or not, about an individual that can reasonably allow the individual to be identified.23

[b] A debtor's personal information may be regulated by the Privacy Act in a number of ways. For example, obtaining a debtor's contact details from their employer is collecting their personal information. Telling a debtor's neighbour the reason for trying to find the debtor will be disclosing personal information about the debtor.24

# Collecting and disclosing the debtor's personal information

- [c] Information handling by private sector organisations such as creditors and debt collectors is regulated, in part, by the National Privacy Principles (the NPPs).25 There are several key obligations around information handling:
  - collect information directly from the debtor whenever possible
  - only collect information that is necessary to recover the debt-for example, do not write down extra information about the debtor from an identifying document just beczuse it might be useful
  - collect information by fair means
- 22 The Office of the Privacy Commissioner (Federal) can be contacted on 1300 363 992 or www.privacy.gov.au. See also under 'Privacy laws' in appendix B of this guideline.
- 23 See s. 6 of the Privacy Act for the definition of 'personal information'.
- 24 For more information about these and other key concepts, see Guidelines to the National Privacy Principles (the NPP guidelines); available at www.privacy.gov.au/publications/nppg\_01.html.
- For the NPPs, see www.privacy.gov.au/publications/npps01.html; and the NPP guidelines generally on how the NPPs are applied.

- when the debtor's information is collected, whether from a creditor or from the debtor, take reasonable steps to let the debtor know that it has been collected and what is going to be done with it<sup>26</sup>
- when making inquiries about a debtor from a neighbour or an employer, do not disclose information about the debtor, such as indicating that you are collecting a debt
- for the same reason, be careful about what information is contained in messages left on answering machines.
- [d] Generally, personal information should only be used and disclosed for the purpose for which it was collected. There are some limited exceptions to this rule.<sup>27</sup>

### What you should do with the debtor's personal information

- [e] Remember the following:
  - if the information is no longer needed for an allowable purpose, destroy it or permanently de-identify the record<sup>28</sup>
  - if you keep the information for any time, make sure it is accurate, complete and up to date
  - if the information is kept for any time, ensure it is secure against loss or unauthorised handling
  - if the debtor wants to see their information they have a right to do so and to correct it if it is wrong.

### Rights of third parties

[f] Collectors also have privacy obligations to third parties whom they contact.

Under National Privacy Principle 1, the personal information of third parties may only be collected (i.e. recorded) if this is necessary for one or more functions or activities of the collector. Third parties must also be advised if their personal information is collected.

<sup>26</sup> Advice about what steps might be reasonable in certain circumstances can be found in the NPP guidelines at www.privacy.gov.au/ publications/nppgl\_01.html.

<sup>27</sup> Advice about the operation of NPP 2 and its exceptions can be found in the NPP guidelines at www.privacy.gov.au/publications/nppgl\_01.hunl.

<sup>28</sup> See NPP 4.2 Allowable purposes are those permitted by NPP 2. Advice about destroying or de-identifying personal information that is no longer required is available in the NPP guidelines at ww.privacy.gov.au/publications/nppgl\_01.html.

### Obligations regarding consumer credit reports

- [g] Part IIIA of the Privacy Act also regulates the handling of personal information contained in consumer credit reports.29 Credit providers should take care what information from a credit report is made available to a debt collector to recover a debt. For example, a credit provider should not disclose to an externally contracted debt collector a credit report or any information from a credit report apart from:
  - details about the debt
  - the name and addresses of the debtor
  - any court judgments or bankruptcy orders against the debtor.30
- [h] While a debtor may have a default listed against them with a credit reporting agency, there are rules about who may make such a listing and when this can be done.31 For example, when a debtor's default has already been listed with a credit reporting agency, that default listing should only be updated to reflect who is currently owed the debt, rather than being separately listed again.

## 8. When a debtor is represented

- [a] A debtor has a right to have an authorised representative (such as a financial counsellor, financial advisor, community worker, solicitor, guardian or carer) represent them or advocate on their behalf about a debt.
- [b] Except in the circumstances outlined in the next paragraph, you should not
  - contact a debtor directly after you know, or should know, that the debtor is represented
  - refuse to deal with an appointed or authorised representative, whether by direct refusal or by placing unnecessary obstacles in the way of the authorised representative, e.g. by insisting on a particular style or form of authorisation when the written authority provided already includes the necessary information.32
- 29 For general advice on credit reporting and the obligations around consumer credit reports, see www.privacy.gov. au/act/credit/index.huml.
- 30 See s. 18N of the Privacy Act at: www.austlii.edu.au/au/legis/cth/consol\_act/pa1988108/s18n.html. See also Privacy Act Fact Sheet 2, Mercantile agents (debt collection agents) at: www.privacy.gov.au/publications/
- 31 See s. 18E of the Privacy Act at www.austiii.edu.au/au/legis/cth/consol\_act/pa1988108/s18e.html.
- 32 In general, any form of authority consistent with requirements of the Privacy Act 1988 (Cwith) should be regarded as acceptable

- [c] You are entitled to contact a debtor directly if:
  - the representative does not respond to your communications within a reasonable time (normally 14 days)
  - the representative advises that they do not have instructions from the debtor about the debt
  - the representative does not consent to act
  - the debtor specifically requests direct communication with you
  - the representative is not a solicitor and you advise that written authority stating that you are to communicate through the debtor's representative is required, and the debtor or their representative does not provide that authority.
- [d] When an authorised representative does not agree to have written correspondence redirected to the representative, such correspondence should continue to be sent directly to the debtor.

### 9. Record keeping

- [a] Accurate record keeping by all parties is vital to promptly resolve disputes and allow collectors and debtors to limit or avoid costly collection activity.
- [b] Collectors should ensure:
  - they maintain accurate, complete and up-to-date records of all communications
    with debtors, including the time, date and nature of calls about the debt,
    records of any visits in person, and records of all correspondence sent
  - all payments made are accurately recorded (including details of date, amount and payment method).
- [c] Creditors should ensure:
  - collectors are provided with accurate, up-to-date information about assigned or contracted debts<sup>33</sup>
  - retained information and documentation can be accessed and forwarded to collectors in a prompt and efficient manner
  - settled debts are not assigned or contracted out for collection.

Note, however, that there are limits on information mercantile agents are permitted to receive from credit providers under Part IIIA, Privacy Ad 1988. More generally on privacy issues: see part 2, section 7 of this guideline.

### Recording debt settlements

- [d] Creditors and collectors have a responsibility to ensure that
  - settlements are fully documented in relevant files and computer systems and
  - · before tranches of debts are assigned, sold or contracted out for collection, all reasonable steps are taken to ensure settled debts are not included.
- [e] Once a debt is settled, any credit reporting agency report on the debtor must be updated appropriately.34

## 10. Providing information and documents

- [a] Requests by debtors for information and/or documentation about an account should not be ignored.
- [b] In certain circumstances, failure to provide information may constitute misleading and deceptive conduct or unconscionable conduct.
- [c] If a debt relates to a consumer loan or credit card facility regulated by the Uniform Consumer Credit Code<sup>35</sup>, specific obligations are imposed on creditors to provide information and documents on request. These are set out in the following sections of the code:
  - section 34 (Statement of amount owing and other matters)36
  - section 36 (Disputed accounts)57
  - section 76 (Statement of payout figure)38
  - section 163 (Copies of contracts and other documents).39
- 34 More generally on credit reporting, see part 2, section 7 of this guideline.
- 35 The UCCC is a scheme of uniform state and territory legislation administered by the state and territory fair trading/consumer affairs agencies. For more information about the code, go to the inter-governmental website: www.creditcode.gov.au. Materials in this guideline related to the UCCC have been prepared in conjunction with the chair of the UCČC management committee.
- 36 Information to be provided to the debtor or loan guarantor if requested under s. 34(1), UCCC:
  - (a) the current balance of the debtor's account (b) any amounts credited or debited during a period specified in the request
  - (c) any amounts currently overdue and when such amount became due (d) any amount currently payable and the date it became due.
- 37 If a particular liability is disputed in writing, the credit provider must explain in writing in reasonable detail how the liability arises: s. 36(1), UCCC.
- 38 In response to a written request from a debtor or loan guarantor, a credit provider must provide a statement of the amount required to pay out a loan (other than a continuing credit contract facility) at a particular date. Details of items that make up this amount must also be provided if requested: s. 76(1), UCCC.
- 39 This section covers loan contracts, mortgages, guarantees, credit-related insurance contracts in the credit provider's possession, and notices previously given.

- [d] In addition, subscribers to industry codes of conduct may be subject to information and document disclosure requirements. 40 Debtors also have a right to access personal information held about them under National Privacy Principle 6 (subject to certain limits).41
- [e] If a debtor requests information about an amount claimed as owing, or how that amount has been calculated, the creditor should normally provide the debtor with an itemised statement of the account clearly specifying:
  - the amount of the debt and how it is calculated
  - details of all payments made and all amounts (including principal, interest, fees and charges) owing.
- [f] Creditors should also provide copies of contracts and related documents if these are requested.42
- [g] Information and documents should be provided in a timely fashion. The Uniform Consumer Credit Code sets out timeframes to be complied with when the debt relates to a consumer loan or credit card facility. These timeframes also provide a guide to what is reasonable for accounts that are not UCCC-regulated.
- [h] Except for undisputed amounts, all collection activity should be suspended until the account information and/or documents requested have been provided to the debtor. See part 2, section 12 of this guideline.

### Responsibility for providing information and documents

Under the UCCC and more generally, creditors are responsible for ensuring that information and documents requested by debtors are provided to them. Depending on arrangements between the creditor and its agent or assignee, such information may be provided either through the agent or assignee or directly by the creditor.44

41 More generally, see part 2, section 7 of this guideline.

42 Providing a copy of the contract can also assist if a debt has been incurred with a business operating under a trading name that is different to the creditor name supplied to the debtor.

44 Note, however, that Part IIIA of the Privacy Act limits the information mercantile agents are permitted to receive from a credit provider. More generally on privacy issues, see part 2, section 7 of this guideline

<sup>40</sup> For example, subscribers to the Code of Banking Practice (available at www.bankers.asn.au) must comply with code requirements relating to provision of copies of documents (cl. 11) and statements of account (cl. 24).

<sup>43</sup> Under s. 34 (2) of the UCCC, a statement must be provided within 14 days if all information requested relates to a period 1 year or less before the request is given. Otherwise, a 30-day timeframe applies. Having provided a written statement, a credit provider is not required to provide a further statement if requested for a 3-month period; s. 34(4) of the UCCC. Similar timeframes apply to providing documents under s. 163 of the UCCC.

Creditors and collectors need to have appropriate contractual and operational arrangements in place to facilitate the provision of information and documents. This includes prompt and efficient processes for agents relaying requests to creditors, and for creditors responding to those requests. When it is arranged for the creditor to respond directly to the debtor, there will have to be liaison between creditor and collector to ensure that collection activity is suspended until the account information or documents requested have been provided.

## 11. Consistent and appropriate correspondence

- [a] Your written correspondence—including automatically generated letters—should be consistent with both your records and your verbal communications with the debtor, and vice versa.
- [b] Letters and other correspondence should reflect the repayment arrangements that you have made with the debtor. 45 Such correspondence must not make inaccurate representations about
  - the frequency of contact (for example, state that 'numerous attempts have been made to contact you by telephone' or 'numerous previous letters have been sent' if this is not the case)

- liability or the amount owing (for example, state or imply that a debtor is liable for collection charges or fees that you are not legally entitled to claim; or demand payment for an amount that does not account for payments already made).
- [c] It is not appropriate to send reminders or other correspondence about the consequences of non-payment (including automatically generated letters) when:
  - a temporary stay of action or enforcement has been granted
  - you have not provided the information you agreed to provide (whether or not liability for the debt has been disputed)
  - court proceedings regarding the debt have been commenced.<sup>46</sup>

45 See part 2, sections 13 and 14 regarding repayment negotiations.

<sup>46</sup> However, if judgment is subsequently obtained, further correspondence or other communication may be appropriate (for example, to outline alternatives to enforcement of the judgment debt through the courts). For a more general discussion of legal action and procedures, see part 2, section 21.

## 12. If liability is disputed

- [a] You must not pursue a person for a debt unless you have reasonable grounds for believing the person you contact is liable for the debt.<sup>47</sup>
- [b] If a person you contact about a debt claims that:
  - they are not the alleged debtor
  - · the debt has been paid or otherwise settled

and you have not already confirmed their identity and liability, you should suspend further collection activity (including credit report listing) until the debtor's identity and ongoing liability have been confirmed.

- [c] If you continue with collection activity without properly investigating claims that a debt is not owed, you are at considerable risk of breaching one or more of the legal prohibitions of the Commonwealth laws if the debtor is not in fact liable for the debt.
- [d] It is misleading to state or imply that the debtor must prove they are not liable for the debt. In legal proceedings, proof of the debt lies with the person alleging the debt is owed to them.
- [e] If the creditor and/or collector are not able to establish the debtor's ongoing liability for the debt when challenged, collection activity should cease. The creditor should also consider providing a letter to the debtor advising that collection activity has ceased and the circumstances (if any) in which collection activity may be resumed in the future.
- [f] If the parties are unable to resolve a dispute about liability for a debt or the amount owed, a creditor or collector may have an obligation to advise the debtor of internal or external dispute resolution processes available—see further under part 2, sections 22 and 23 of this guideline.

### Formal denial of liability

[g] If a debtor verbally denies a debt and you require a written denial before you stop contact, tell the debtor of this requirement.

<sup>47</sup> For example, you should not send letters requesting payment or alleging a debt is owed to a person or group of persons who may only share a name or surname with the person who incurred the debt.

- [h] Subject to the next paragraph, further communication with a debtor, after the debtor has formally denied liability and/or stated an intention to defend any legal proceedings brought against them, is not appropriate. In these circumstances, you have the option of starting legal proceedings if you choose to pursue the debt.
- [i] However, further communication in writing may be appropriate after a formal denial of liability:
  - to state or reiterate the basis of the creditor's claim and the consequences of legal action being taken
  - to advise the debtor of the creditor's intention to start legal proceedings, and the steps involved
  - to put a genuine proposal for settlement of the matter.

Further communication is also appropriate when it is subsequently authorised or requested by the debtor.

- [j] Further communication about any other debt, or any part of a debt that is not denied, remains appropriate.
- [k] If a court judgment is obtained for a debt for which liability had been denied, you are entitled to start or resume communication with the debtor for that judgment debt (assuming the judgment has not been set aside).

## 13. Repayment negotiations

- [a] We encourage creditors and collectors to work with debtors and to adopt a flexible and realistic approach to repayment arrangements. This includes:
  - making reasonable allowance for a debtor's ongoing living expenses
  - recognising that debtors in difficulties will often have a number of debts owing to different creditors.
- [b] In some circumstances a prolonged period of negotiation about a debt may not be in the interests of the debtor. This may be the case, for instance, when a debtor's equity in their home or other security is reducing rapidly because they can no longer maintain minimum loan repayments. It is appropriate for creditors to take this kind of circumstance into account in their approach to negotiations with debtors.

- [c] Debtors experiencing financial hardship regarding their consumer loans or credit card facilities may apply to the creditor for a variation or change of their repayment arrangements on the grounds of hardship under the Uniform Consumer Credit Code (UCCC).<sup>48</sup>
- [d] In addition, the Code of Banking Practice obliges subscribing banks to help debtors overcome their financial difficulties and advise them of any rights they may have under the UCCC.<sup>49</sup>
- [e] You must not mislead the debtor in the context of repayment negotiations. For instance, you must not:
  - advise a debtor that you do not, or are unable to enter into repayment arrangements when this is not the case
  - mislead a debtor about their rights to seek a repayment variation when such a right exists.
- [f] It is also unacceptable to pressure a debtor:
  - to pay in full, in unreasonably large instalments, or to increase payments when you are aware they are unable to do so
  - to get further into debt to pay out an existing debt
  - to show proof of unsuccessful alternative credit applications before a repayment plan will be negotiated.
- [g] Creditors and collectors must ensure that repayment arrangements are fully documented.
- [h] The collector or creditor (as relevant) should provide a written copy of an agreed payment arrangement to the debtor on request. You should also consider offering to provide a written copy, even when this is not specifically requested, in situations where an ongoing arrangement for periodic payments has been agreed to.<sup>50</sup>
- Once finalised, repayment arrangements should be given a chance to work—see the next section.
- Under s. 66 of the UCCC a debtor unable reasonably to meet their obligations (because of illness, unemployment or other reasonable cause) can apply to their lender to extend the loan repayment period and reduce their periodic payments and/or to postpone payments for a period. The debtor must reasonably expect to be able to discharge their obligations under the proposed arrangements. If the lender does not agree to the variation proposed, the debtor can apply to a court or tribunal with jurisdiction to hear applications: s. 68 of the UCCC. This regime is subject to a maximum 'floating threshold' linked to the cost of housing for more information, search under 'hardship threshold' at www.creditrode.gov.au.
- 49 Section 25.2 of the Code of Banking Practice states in part With your agreement, we will try to help you overcome your financial difficulties with any credit facility you have with us. We could, for example, work with you to develop a repayment plan'.
- Note that when the debt relates to an account regulated by the UCCC, an agreement that defens or otherwise reduces the debtor's obligations for more than 90 days must be put in writing and given to the debtor. s. 65 of the UCCC.

# 14. Contact when a payment arrangement is in place

- [a] Generally, while an arrangement is in place, do not contact the debtor unless:
  - the debtor asks you to
  - you wish to propose a genuine alternative or variant arrangement to benefit the debtor
  - · the debtor does not comply with the terms of the agreement

In addition, if you are required to provide or have committed to provide ongoing account statements to the debtor, you should continue to do so.

[b] You are entitled to contact a debtor to review an informal arrangement that was made subject to review. However, repayment reviews should not be excessively frequent—we recommend a minimum of three months between reviews unless a further default occurs sooner.

## 15. Contact following bankruptcy or a Bankruptcy Act agreement

The following information on bankruptcy has been written with advice from the Insolvency Trustee Service Australia, the Commonwealth body responsible for regulating bankruptcy and Bankruptcy Act agreements.

- [a] Under the Bankruptcy Act an unsecured creditor<sup>52</sup> may lodge a proof of debt with the bankrupt's trustee. With limited exceptions set out in the Act, an unsecured creditor may not:
  - take or continue legal action or allow recovery action to continue against the bankrupt person

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- take any remedy against the person or property of the bankrupt.
- 51 ITSA can be contacted on 1300 364 785 or www.itsa.gov.au. ITSA has published Information for creditors about bankruptcy (June 2004) available from the ITSA site.
- 52 A creditor who does not hold a mortgage, bill of sale or other security over an asset that can be sold if the debt is not paid.

- [b] A creditor or collector must also stop all informal collection activity against a bankrupt person for an unsecured debt.
- [c] Trying to persuade a bankrupt person that they should or must pay an unsecured debt covered by the bankruptcy will constitute misleading and deceptive conduct under the consumer protection laws.<sup>52</sup> Contacting a bankrupt person about such a debt may also amount to harassment of the debtor and/or unconscionable conduct.
- [d] Secured creditors<sup>54</sup> (including their agents) are entitled to take possession of secured assets and sell these if the bankrupt person is in default. Contacting a bankrupt debtor to sight, inspect and/or recover a security interest is permissible as long as the contact is consistent with the law.
- [e] In certain circumstances a bankrupt person may also agree to pay a secured creditor to keep an asset. Ongoing communication with the bankrupt person in connection with such an arrangement is also permissible.
- [f] Apart from becoming bankrupt, in certain circumstances a debtor may enter into a Part IX debt agreement or Part X personal insolvency agreement under the Bankruptcy Act. These agreements involve a process by which a debtor makes a proposal to the creditors. If this proposal is formally accepted by the creditors, both debtor and creditors are bound by it and creditors cannot enforce remedies to recover their debts as long as the agreements are valid and are not declared void by a court or otherwise terminated. As with bankruptcy, secured creditors' rights are not affected by these agreements.<sup>55</sup>
- [g] Unsecured creditors (or their agents) should contact the trustee of a bankrupt estate, or the administrator of a Part IX or Part X agreement for information about the possibility of recovering their debt.

<sup>53</sup> When a person is bankrupt, the debt may be recoverable from the bankrupt person's estate. In this case, the trustee of the bankrupt estate and not the bankrupt person should be contacted.

<sup>54</sup> A creditor who holds a mortgage, bill of sale or other security over an asset that can be sold if the debt is not paid.

<sup>55</sup> Further information is available on the ITSA website on www.itsa.gov.au or 1300 364 785.

## 16. Conduct towards the debtor

[a] A debtor is entitled to respect and courtesy, and must not be subject to misleading, humiliating or intimidating conduct. Such conduct is likely to breach the Commonwealth consumer protection laws, and may breach other laws as well.

#### [b] Do not

- · use abusive, offensive, obscene or discriminatory language
- make disrespectful or demeaning remarks about a debtor's character, situation in life, physical appearance, intelligence or other characteristics or circumstances
- embarrass or shame a debtor—for example, by sending open correspondence to a shared post-box, making the debtor's employer or co-workers aware that the debtor is being pursued for a debt, or creating an impression that the debtor is under surveillance<sup>56</sup>
- adopt an aggressive, threatening or intimidating manner—for example, by shouting at or continually interrupting the debtor, or by refusing to listen to what the debtor has to say
- threaten to use, or use violence or physical force against a debtor, third party or against property<sup>57</sup>
- mislead a debtor about the nature or extent of a debt, or the consequences of non-payment.<sup>58</sup>
- [c] Inappropriate behaviour by a debtor does not justify unprofessional conduct by the collector.
- [d] Where possible, the collector should attempt to diffuse such behaviour and refocus discussion on the outstanding debt and arrangements for its repayment. Debtor frustration and/or anger are more likely to be contained where viable and achievable repayment arrangements are proposed. In the event of violence or other extreme conduct, the appropriate response is to cease contact immediately and refer the matter to the police.

<sup>56</sup> Such actions may also involve a breach of the collector's privacy obligations to the debtor: see part 2, section 7 of this guideline.

<sup>57</sup> Such threats or actions may also constitute criminal conduct.

<sup>58</sup> See further under part 2, sections 19-21 of this guideline.



A company was found to have breached the prohibitions against harassment and coercion when its agents pinned a man to the ground during a vehicle seizure, even though the company had a contractual right to seize a debtor's vehicle. The court found this to be the case notwithstanding the fact that the man threatened the agents with assault.

ACCC v Davis [2003] FCA 1227

## 17. Debtors at a special disadvantage

- [a] As with other people involved in trade and commerce, collectors must not engage in unconscionable conduct. Collectors are at risk of breaching this prohibition if they take advantage of the disability, weakness or vulnerability of a specially disadvantaged or vulnerable person.
- [b] Under the general law, 'special disadvantage' means that the consumer has a condition or is in a circumstance that seriously affects their ability to judge what is in their best interest. Factors that may give rise to a special disadvantage include:
  - · ignorance of important facts known to the staff or agent of the business
  - illiteracy or lack of education
  - · poverty or need of any kind
  - · the consumer's age
  - · infirmity of body or mind
  - drunkenness
  - lack of explanation and assistance when necessary.<sup>50</sup>
- [c] The statutory prohibition of unconscionable conduct, which builds on the general law concept, is considered further in this guideline. It requires courts to consider all the circumstances of the case, including a number of specific factors such as whether undue influence has been exerted or unfair tactics have been adopted towards the consumer or a third party.

<sup>59</sup> See Blomley v Ryan (1956) 99 CLR 362, Commercial Bank of Australia v Amadio (1983) 151 CLR 447.

<sup>60</sup> See part 3, Prohibition of unconscionable conduct'.

- [d] You should consider whether any circumstances of special disadvantage or vulnerability apply to a debtor whom you contact. If it does, make sure you interact with the debtor in a way that does not take advantage of their disadvantage. Otherwise, your conduct is likely to be regarded as unconscionable and in breach of the law.
- [e] When you know or suspect a debtor lacks knowledge of the law, the debt recovery process, or the implications of non-payment of a debt, you must not take unfair advantage of their ignorance.
- [f] Depending on the circumstances, it may be appropriate to encourage the disadvantaged debtor to seek the assistance of a family member to support them, or a financial counsellor to act on their behalf.

### Non-English speaking debtors

[g] For someone who cannot speak English, appropriate interaction requires that the debtor can understand you. The assistance of an English-speaking family member or friend to translate should be sought, but only if the debtor proposes or agrees to this.61 Otherwise, a professional interpreter will need to be engaged.62

## 18. Conduct towards family members and other third parties

- [a] You must not try to pressure a debtor by misleading, harassing, threatening or putting pressure on a debtor's spouse or partner, or a member of the debtor's family (especially a child) or other third parties.
- [b] All communication with third parties, including members of the debtor's family, must be consistent with the collector's privacy obligations to the debtor and the third party. See the discussion of privacy obligations to the debtor and third parties in part 2, section 7 of this guideline.

61 On the use of children (under 18 years) as translators, see the next section.

The Department of Immigration and Multicultural and Indigenous Affairs provides a 24-hour translating and interpreting service accessible on 131 450. User fees generally apply.

- [c] Communication with a third party can amount to a breach of the consumer protection laws if you:
  - suggest or imply that the third party is liable for the debt when that person
    has no legal obligation to pay
  - suggest or imply that the third party should try and persuade the debtor to pay the debt, or that the third party should themselves pay the debt
  - put pressure on the debtor indirectly by involving the third party
  - embarrass or distress the debtor.
- [d] The standard for acceptable conduct towards third parties is, if anything, even higher than that applying to the debtor.
- [e] When it is appropriate to communicate with a third party, do so by telephone or other non-intrusive means wherever possible. Only visit a third party at their home or other location when no other means of making contact is available, for example, when you only have or can only reasonably obtain an address.
- [f] Attempting to get information about a debtor from a third party under false pretences, for example, by pretending to be an associate or friend of the debtor, constitutes misleading and deceptive conduct and is against the law.
- [g] A third party is not obliged to give you information, nor agree to leave a message for a debtor, or otherwise help you. If a third party indicates they do not want to help you—however unreasonable that refusal may seem to you—stop contacting the third party.

### Communication with the debtor's child

[h] Attempting to pressure a debtor by instigating unauthorised communication with the debtor's child, or by making threats about the debtor's child (for example, threatening to report the debtor to the family welfare authorities) is likely to constitute undue harassment or coercion and/or unconscionable conduct within the meaning of the consumer protection laws, and is entirely unacceptable behaviour.

<sup>63</sup> On the hours and frequency of contact with third parties, see part 2, sections 3 and 4 of this guideline. If communication is made with a third party, the creditor or collector should avoid disclosing any information about the debtor including the existence of the debt see part 2, section 7 of this guideline.

- [i] A collector should never communicate with a debtor's child (under the age of 18) about a debt, unless:
  - communication with that child is specifically authorised and initiated by the debtor; or the debtor, on their own initiative, asks the child to act as a translator
  - the collector reasonably believes the child is willing and able to act as a translator or other intermediary
  - the collector reasonably believes that the child has not been coerced in any way by the debtor or another party.<sup>64</sup>
- [j] The collector must take particular care to ensure their conduct and demeanour do not distress or embarrass the child. The collector should immediately cease communication involving the child if the child appears to become upset, or the child or a member of the child's family requests that the communication cease.

# 19. Representations about the consequences of non-payment

- [a] This section should be read in conjunction with part 2, sections 20 and 21 of this guideline.
- [b] You are entitled to accurately explain the consequences of non-payment of a debt, but must not misrepresent those consequences. Misrepresentation may increase the risk of breaching laws against unconscionable conduct when the debtor is in a position of special disadvantage or vulnerability.
- [c] You must not threaten legal action if the start of proceedings is not possible, or not under consideration, or you do not have instructions to start proceedings.
- [d] Conversely, you must not state or imply that action will not be taken when the start of proceedings is intended or under consideration.

Note that in Victoria, any communication with a person under the age of 18 regarding a debt (if the person is not the debtor) is deemed to constitute undue harassment or coercion under s. 21(2)(k) of the Fair Trading Ad 1999 (Vic.).

<sup>65</sup> Apart from constituting misleading and deceptive conduct under the consumer protection laws, misrepresenting the consequences of non-payment of a debt also constitutes undue harassment or coercion under s. 26(2)(b) Fair Trading Act 1992 (ACT) and s21(2)(b) Fair Trading Act 1999 (Vic.).

<sup>66</sup> See part 2, section 17 of this guideline.

A company sent a debtor a letter implying that they would not or could not lawfully repossess a car without a court order, but then proceeded to repossess the car without this order. The court found this to be a contributing factor towards a finding of unconscionable conduct.

ACCC v Esanda Finance Corporation Ltd [2003] FCA 1225

A collection officer told a debtor by phone to accept a letter that was being delivered, and that no action would be taken. When the debtor contacted the collection officer through an authorised representative (a financial counsellor), they found that the collector had issued a Statement of Liquidated Claim and intended to proceed to judgment on the debt.

### Do not state or imply that:

- immediate possession will be taken of a debtor's home or other property when the debt is not secured by that property, or the creditor has not obtained judgment for the debt
- unsecured goods may be seized and sold without further legal action
- unsecured basic household items can be seized if the debtor is made bankrupt<sup>67</sup>
- additional fees or charges will be added to the debt if payment is not made, if such fees or charges are not permitted by law68
- additional fees or charges will be added to the debt where there is no contractual right to add these.

### [f] Do not state or imply that:

- · failure to pay a debt is a criminal matter when no fraud or other offence
- a matter will be referred to the police when there is no intention to make such a referral
- criminal proceedings may be commenced by the creditor or agent or other private person themselves.69

<sup>67</sup> Section 116 of the Bankruptcy Act 1966 excludes these items from seizure by creditors.

<sup>68</sup> For example, s. 38 of the Private Agents Act 1966 (Vic.) sets a statutory limit on the charges and costs that a commercial agent may charge, recover or receive from a debtor. Similarly, s. 347 of the Property Agents and Motor Dealers Act 2000 (Old) prohibits the recovery of a commercial agent's fees or charges (besides stamp duty and costs fixed by or payable under the rules of a court or a court order) in the absence of an agreement with the debtor allowing such recovery, and subject to the Consumer Credit Code.

<sup>69</sup> Such conduct will also breach s. 43(2)(a), Fair Trading Act 1987 (SA).

#### Credit reporting

- [g] Do not state or imply that you intend to list a debt with a credit reporting service when:
  - you do not have a genuine belief that the debtor is liable for the debt
  - · you have no instructions to list the debt, and/or it is not your intention to do so
  - listing is not permitted by law or under a mandatory code<sup>70</sup>
  - the debt has already been listed.
- [h] Equally, while it is appropriate to point out the possible consequences of a credit listing, you must not make misleading representations about those consequences.
- [1] Generally, it is not appropriate to make an adverse credit listing:
  - when you are in the process of investigating a debtor's claim that a debt is not owed
  - if you are aware that the debtor has filed process with a tribunal or court disputing liability for the debt.
- [] For more general information on credit reporting obligations, see part 2, section 7 of this guideline.

# 20. Representations about the legal status of a debt—including statute-barred debt

- [a] This section should be read with part 2, section 19, and part 2, section 21 of this guideline.
- [b] Collectors should not state or imply that legal action will or may be taken when a defence at law applies. Among other defences, a debtor will be able to claim a defence if:
  - the debtor has been declared bankrupt<sup>71</sup> and the debt(s) is unsecured
  - the right to pursue the debt in court has expired due to the passing of time.
     This time limit varies from state to state, but is usually six years (three years in the Northern Territory) from the date the debt was last acknowledged by the debtor (for example, by making a payment).

<sup>70</sup> For example, provision 2.8 of the Credit Reporting Code of Conduct prohibits the listing of statute-barred debts.

<sup>71</sup> Alternatively, the debtor has entered into a Part IX debt agreement or a Part X personal insolvency agreement under the Bankruptcy Act see part 2, section 15 of this guideline.

- [c] Representing that legal action will or may be taken when a debt is statute-barred may be misleading and deceptive. Such representation may also be unconsciouable when the debtor has not had the opportunity to obtain legal advice.
- [d] The Credit Reporting Code of Conduct prohibits the listing of statute-barred debts.<sup>72</sup>

An unemployed mother of a deaf, dependent child was cold-called by a collector who questioned her about her personal and financial circumstances. The collector implied that legal proceedings may be instituted if no payment was made on a debt of \$10 000 that, unknown to the debtor, was statute-barred. The court found the collector's conduct to be unconscionable and noted that the circumstances were sufficient to require the collector to establish that the transaction was fair, just and reasonable—which the collector did not do.

Collection House v Taylor [2004] VSC 49

## 21. Legal action and procedures

- [a] This section should be read in conjunction with part 2, sections 19 and 20 of this guideline.
- [b] Creditors and their agents have a right to pursue debts through the courts. However, in pursuing or threatening to pursue legal action you must comply with the consumer protection laws.
- [c] Do not make misrepresentations about the legal process. For instance, do not
  - misrepresent the nature or purpose of correspondence. Ensure the layout, wording and design of documents (for example, letters of demand) are not likely to create the impression that they are court process or other court documents, or that they come from a solicitor's office, when this is not the case<sup>73</sup>
  - suggest that telephone calls are recorded 'for training purposes' (and, by implication, only for such purposes) when those calls may also be used as evidence

72 See Office of the Privacy Commissioner website at www.privacy.gov.au/publications/.

<sup>73</sup> See also s. 26(2)(a),(c),(f)(g) Fair Trading Act 1992 (ACT); s. 21(2)(a),(b),(c)(f) Fair Trading Act 1999 (Vic.); and s. 43(2)(c) Fair Trading Act 1987 (SA). These provisions relate specifically to misrepresentation regarding documents, court process etc.

- · misrepresent that failure to pay a debt (where no fraud is involved) is a criminal or police matter, or is likely to be referred to the police74
- · misrepresent that you are a police officer, court official, or have some official capacity that you do not have to claim or enforce payment of a debt75
- · state or imply that unsecured basic household items can be seized if the debtor is made bankrupt76
- state or imply that you have instructions to start legal proceedings when this is not intended, or you have received no such instructions
- state or imply that legal action has already been taken, or judgment entered, when this is not case.
- [d] In certain circumstances the way legal action is threatened or employed can amount to unconscionable conduct or harassment. For instance, this may be the case if you start or escalate court action against a debtor when you have agreed not to, or when a payment arrangement is in place and is being complied with.
- [e] When you know or can reasonably obtain the debtor's current address, we recommend that you issue debt recovery proceedings in the jurisdiction where the debtor lives.77 In some circumstances, limiting a debtor's ability to contest court proceedings by starting those proceedings in an inconvenient jurisdiction may constitute, or be part of a course of conduct constituting unconscionable conduct.

A collector breached misleading and deceptive conduct provisions by representing that they were about to sell a debtor's residence to obtain payment, when they had not started any legal proceedings at the time They also breached these provisions by making baseless claims that they would have the debtor arrested by the police or the Fraud Squad.

ACCC v McCaskey [2000] FCR 1037.

<sup>74</sup> Sec also s. 43(2)(a) Fair Trading Ad 1987 (SA) which specifically prohibits false representations that criminal or other proceedings will lie for non-payment of a debt.

<sup>75</sup> See also s. 26(2)(d) Fair Trading Act 1992 (ACT); s. 21(2)(d) Fair Trading Act 1999 (Vic.); and s. 43(2)(b) Fair Trading Ad 1987 (SA).

<sup>76</sup> Section 116 of the Bankruptty Aat 1966 excludes these items from seizure by creditors.

<sup>77</sup> Applications under the UCCC (for example, for repossession of security interests related to regulated contracts) need to be brought in the jurisdiction where the debtor resided at the time the contract was entered into: see s. 6 of the UCCC. However, this requirement does not apply to debt recovery proceedings as such.

# 22. Resolving debtor complaints and disputes

- [a] Complaints and disputes must not be ignored. Creditors and collectors must have effective internal processes in place for logging, assessing, and where appropriate, taking timely action in response to them. Staff need to be trained to identify complaints and disputes, and to ensure that established procedures are followed in dealing with them. 76
- [b] It is not acceptable to require that a complaint or dispute be in writing, and/or explicitly identified as such by the complainant/disputant, before it is considered or investigated.<sup>79</sup>
- [c] Entities providing financial services to retail clients who are required under the Corporations Act 2001 to have an Australian financial services licence (including banks, credit unions and building societies) must have an ASIC approved dispute resolution system, including internal dispute resolution [IDR] procedures. Societies ASIC requires that licensees' IDR procedures satisfy the essential elements of Australian Standard AS 4269:1995 and be appropriately documented. Societies Complaints/disputes handling standards may also be imposed as a condition of membership of an industry code or external dispute resolution scheme.
- [d] Generally, we recommend that all creditors and collectors have in place internal complaint/dispute handling processes that are, at least, consistent with the Australian Standard AS 4269:1995 (or any Australian Standard that may subsequently replace it).

<sup>78</sup> Creditors and collectors also need to have appropriate contractual and operational arrangements in place to facilitate providing information and documents required to resolve disputes: see part 2, section 10 of this guideline.

<sup>79</sup> However, if the complaint is escalated to an external dispute resolution scheme (see part 2, section 23 of this guideline) it will generally need to be put in writing.

<sup>80</sup> Sections 912A(1)(g) and 912A(2)(a), Corporations Act 2001.

<sup>81</sup> See ASIC policy statement 165, at 165.10. As part of the ASIC requirements, licensees must also have a system for informing complainants about the availability and accessibility of the relevant external dispute resolution scheme to which a licensee belongs. See part 2, section 23 of this guideline.

# 23. The role of independent external dispute resolution schemes

- [a] Many creditor organisations (including telecommunications companies, utility suppliers and financial services businesses) belong to an independent external dispute resolution [EDR] scheme. E2 Specialist collection and debt buy-out agencies, and other finance providers, may also decide to join a scheme. Belonging to an EDR scheme is a legal requirement for some creditors. E3
- [b] The ACCC and ASIC support the role played by EDR schemes in resolving consumer complaints and disputes when these are unable to be resolved through the creditor or collector's internal dispute resolution processes.
- [c] We urge creditors and collectors to ensure their systems and practices allow EDR in the debt collection area to work effectively. In particular:
  - when applicable, creditors and collectors must advise debtors of an EDR
    scheme to which the debtor can take his or her unresolved dispute—ensuring
    this information is provided to debtors at the appropriate time is a requirement
    imposed on EDR scheme members, and may be stipulated under relevant laws
    or codes
  - collection activity relating to a dispute that has been referred to an EDR scheme must be suspended while the scheme considers the dispute—again, this is a requirement imposed on scheme members (including their agents)
  - a debt should not be sold, or passed to an external agent for collection,
     while a scheme is considering a dispute in relation to it
  - if a debt is inadvertently sold, the assignor/creditor should seek to retrieve
    the debt from the assignee, and/or seek to ensure that the assignee does not
    undertake collection activity or start legal proceedings until the scheme has
    resolved the dispute (and then only if liability is confirmed).

<sup>82</sup> For a list of relevant ombudsman schemes, and for further information on EDR schemes, see the ACCC and ASIC publication entitled Dealing with debt your rights and responsibilities (obtainable from either the ACCC or ASIC, contact details in appendix A of this guideline).

<sup>83</sup> These include banks, building societies and credit unions providing financial services to retail clients who must belong to one or more ASIC approved EDR scheme as a requirement of their financial services licence: see ss. 912A(1)(g) and 912A(2)(b), Corporations Act 2001. ASIC policy statement PS 139 sets out ASIC requirements for scheme approval. A list of approved schemes can be obtained at www.asic.gov.au.

- [d] Note that a creditor may remain subject to the jurisdiction of an EDR scheme for a debt matter even though the creditor has sold or assigned the debt in question. This is likely to be the case when the complaint relates to the period before the sale or assignment of the debt.
- [e] The ACCC and ASIC encourage EDR schemes to consider this guideline when determining how the consumer protection laws we administer should be applied to particular debt collection-related matters.

# Part 3: Commonwealth consumer protection laws

This section summarises key prohibitions and remedies under Commonwealth consumer protection laws applicable to collection activity. Relevant court decisions about the Trade Practices Act provisions also apply to equivalent ASIC Act provisions.<sup>84</sup>

See appendix B for other statutory and common law obligations and remedies.

# Prohibition of the use of physical force, undue harassment and coercion

### Section 60 Trade Practices Act

A corporation shall not use physical force, undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

#### Section 12DJ ASIC Act

A person contravenes this subsection if:

- (a) the person uses physical force or undue harassment or coercion; and
- (b) the person uses such force, harassment or coercion in connection with the supply or possible supply of financial services to a consumer or the payment for financial services by a consumer.

Under s. 60 of the Trade Practices Act, and s. 12DJ of the ASIC Act, the use of

- physical force
- · undue harassment and/or
- coercion

to support a demand for payment for goods or services/financial services is deemed unacceptable and is prohibited. These provisions are not limited to conduct directed at a debtor. They also apply to the collector's conduct towards a third party (for instance, a family member).

The terms 'physical force', 'harassment' and 'coercion' are not defined in the law. They should be understood in the way they are ordinarily used and defined.

### Physical force

There is no concept of 'due' or 'undue' physical force under s. 60 of the Trade Practices Act, or s. 12DJ of the ASIC Act. Any use of any violence or physical force is prohibited. The use of force may also be a criminal offence under state and territory criminal law.

In ACCC v Davis and ACCC v Capalaba<sup>85</sup> the court found that, in pinning a debtor to the ground while the debtor's vehicle was removed from the debtor's premises, the respondent corporation through its agents breached s. 60 of the Trade Practices Act. The fact that the collector had a contractual right to seize the vehicle under a mortgage over the vehicle did not permit the use of physical force to overcome the debtor's resistance to the seizure.

#### Undue harassment

Undue harassment may occur when repeated approaches are made or repeated pressure is applied to a debtor, going beyond what is acceptable or reasonable. While the harassment must be 'undue', there is no requirement that the conduct must involve the threat of an illegal act. 86

<sup>85</sup> ACCC v Davis [2003] FCA 1227. ACCC v Capalaba Pty L1d & Others [2003] FCA 1226.

<sup>86</sup> Campbell v Metway Learing Ltd (1998) ATPR 41-630.

In ACCC v Maritime Union of Australia, <sup>57</sup> Justice Hill explained the meaning of the term undue harassment as follows:

The word harassment means in the present context persistent disturbance or torment. In the case of 2 person employed to recover money owing to others ... it can extend to cases where there are frequent unwelcome approaches requesting payment of 2 debt. However, such unwelcome approaches would not constitute undue harassment, at least where the demands made are legitimate and reasonably made. On the other hand where the frequency, nature or content of such communications is such that they are calculated to intimidate or demoralise, tire out or exhaust a debtor, rather than merely convey the demand for recovery, the conduct will constitute undue harassment ... Generally it can be said that a person will be harassed by another when the former is troubled repeatedly by the latter. The reasonableness of the conduct will be relevant to whether what is harassment constitutes undue harassment.

#### Coercion

Judicial authority indicates that s. 60 of the Trade Practices Act and s. 12DJ of the ASIC Act prohibit any 'coercion', not just 'undue coercion'. 88 The concept of coercion does not involve the element of repetition usually involved in the concept of undue harassment. Coercion is said to 'carr[y] connotations of force or compulsion or threats of force or compulsion negating choice or freedom to act'. 89 Coercion may take many forms, and is not limited to using or threatening physical force.

# Prohibition of misleading and deceptive conduct

Section 52(1) Trade Practices Act

A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

<sup>87</sup> ACCC v The Maritime Union of Australia [2001] FCA 1549 at ¶ [60], Justice Hill.

<sup>88</sup> ibid. at ¶ [61]-[63].

<sup>89</sup> ibid. at ¶ [63].

#### Section 12DA(1) ASIC Act

A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

These provisions apply widely to trade or commerce activities, of which collectors' activities are but one aspect.

The above sections prohibit a collector from making any statement or engaging in any other conduct (for example, impersonating someone, or using a false letterhead or document) that is misleading or deceptive or is likely to mislead or deceive. The terms 'misleading' and 'deceptive' are not defined in the statute and should be understood in the way they are ordinarily used and defined.

Collectors may breach this prohibition even though they do not intend to mislead—it is enough that the misrepresentation is likely to have this effect on the type or class of person to whom the conduct is directed. In some circumstances, a collector may need to positively disclose information to avoid creating a misleading impression.

In ACCC v McCaskey<sup>90</sup> the court accepted that a collector breached s. 52 of the Trade Practices Act by conduct towards debtors including representations that

- the agent was about to take immediate steps to sell a debtor's residence to obtain payment of a debt owed when no legal proceedings to recover the debt had been started at the time
- the agent would arrange to have the debtor arrested by the police or the fraud squad if the debtor did not make immediate payment of the debt, when there was no reasonable basis on which the collector could have taken that action.

The ACCC's publication, Advertising and selling (December 2004), discusses misleading and deceptive conduct (as well as other issues) in more detail. The principles discussed there also generally apply to the prohibition against misleading or deceptive conduct in the ASIC Act. For a copy of this booklet, visit www.accc.gov.au/publications or call the ACCC Infocentre on 1300 302 502.

## Prohibition of unconscionable conduct

Trade Practices Act, Part IVA—unconscionable conduct (summary only)

Part IVA contains three provisions that prohibit unconscionable conduct

- (a) s. 51AA (unconscionable conduct within the meaning of the unwritten law of the states and territories)
- (b) s 51AB (unconscionable conduct)
- (c) s 51AC (unconscionable conduct in business transactions).

### Section 51AB Trade Practices Act (unconscionable conduct)

This section prohibits a corporation in trade of commerce, in connection with the supply or possible supply of goods or services to a person', from engaging in 'conduct that is, in all the circumstances, unconscionable': s. 51AB(1).

Without limiting the matters a court can consider in determining whether s. 51AB(1) has been contravened, the court can consider:

- (a) the relative strengths of the bargaining positions of the corporation and the consumer
- (b) whether, as a result of the conduct, the consumer was required to comply with conditions that were not reasonably necessary to protect the corporation's legitimate interests.
- (c) whether the consumer was able to understand documents relating to the supply or possible supply of the goods or services
- (d) whether undue influence or pressure was exerted on, or unfair tactics were used against, the consumer or a person acting on behalf of the consumer
- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods from another trader.

Section 51AB is limited to unconscionable conduct regarding the supply or possible supply of goods or services of a kind 'ordinarily acquired for personal, domestic or household use or consumption' (s. 51AB(5)).

Part 2, Div. 2, subdiv. C, ASIC Act—unconscionable conduct (summary only)

This subdivision is based on, and is substantially similar to, Part IVA of the Trade Practices Act but is limited to the supply or possible supply of 'financial services'. Unlike Part IVA of the Trade Practices Act, the subdivision applies to unconscionable conduct of 'persons' generally and is not limited to the conduct of 'corporations'.

These provisions apply widely to trade or commerce activities, of which collecting activities are but one aspect.

Collectors risk breaching this prohibition particularly when they exert undue influence or pressure on, or unfair tactics against, a debtor who is specially disadvantaged or vulnerable.

In Collection House v Taylor<sup>51</sup> it was found that a commercial agent had acted unconscionably in trying to recover a debt that, unknown to the debtor, was statute-barred. It was also noted that the factual circumstances were sufficient to require the collector to establish that the transaction was fair, just and reasonable.

The debtor was an unemployed mother with a deaf, dependent child, who had originally defaulted on repayments for a car loan. The car was repossessed and sold. The residual debt was purchased by the commercial agent a number of years later, by which time accumulated interest had increased the amount owing to more than \$10 000.

After being contacted by an employee of the commercial agent and told that legal action may be taken if a satisfactory arrangement could not be reached, the debtor agreed to pay \$5000 to finalise the debt, of which \$4500 was immediately charged to her credit card. The court upheld the original decision that the agent through its employee had acted unconscionably. The court noted that:

... the fact of someone from a firm of lawyers 'cold-calling' a woman of the respondent's socio-economic standing at home at 6.30 in the evening, and interrogating her as to her personal and financial circumstances while insinuating that in the absence of her agreement to pay legal proceedings may be instituted, is capable of constituting pressure of a very high order.

In ACCC v Esanda Finance Corporation Ltd<sup>92</sup> the court found that the creditor had

acted unconscionably by failing to stop efforts to repossess a car subject to a chattel mortgage when there was reasonable cause to understand that there would be a physical confrontation if they continued in their attempt. Other factors considered in the court's declaration of unconscionability include the creditor sending the debtor a notice implying that they would not or could not lawfully repossess the car without a court order, and then repossessing the vehicle without such an order, as well as the fact that Esanda's agents entered the debtor's residence by jumping a gate and opening a garage door from the inside.

See the ACCC's Guide to unconscionable conduct for more about this area of law. The principles discussed in this guide also generally apply to the ASIC Act. For a copy of this guide, visit www.accc.gov.au/publications or call the ACCC Infocentre on 1300 302 502.

# Enforcement and remedies for breaching the Trade Practices Act or the ASIC Act

#### Fines

A collector who breaches the harassment and coercion provisions is guilty of an offence punishable on conviction by a fine of up to:

- \$220 000 (in the case of individuals)
- \$1 100 000 (in the case of corporations).93

These penalties also apply when a collector is convicted of knowingly making false or misleading representations. 94 Certain defences may apply regarding these breaches. 95

#### Civil orders

Apart from criminal sanctions, ASIC or the ACCC can also apply for civil orders against a collector, including:

- injunctions against future conduct<sup>96</sup>
- non-punitive orders<sup>97</sup>
- punitive orders requiring adverse publicity.98

#### Damages or injunction

Finally, a debtor or third party who suffers loss or damage as a result of a collector's breach of the unconscionable conduct<sup>99</sup>, misleading or deceptive conduct<sup>100</sup>, harassment and coercion, or other provisions of the ASIC Act and Trade Practices Act, can recover the amount of their loss by an action for damages under these Acts. <sup>101</sup> A debtor or third party can also seek injunctive relief. <sup>102</sup>

- 93 Section 12GB(1) of the ASIC Act and ss. 6(6) and 75AZN of the Trade Practices Act. Penalties are denominated in 'penalty units' in the legislation (10 000 in the case of corporations and 2000 in the case of individuals), with 1 penalty unit being equal to \$110 at the time of publication. The value of penalty units can change over time.
- 94 Section 12 DB, ASIC Act, s. 75AZC Trade Practices Act.
- 95 Section 12GI, ASIC Act; s. 85 Trade Practices Act.
- 96 Section 12GD, ASIC Act; s. 80 of the Trade Practices Act.
- 97 Section 12GLA, ASIC Act, s. 86C of the Trade Practices Act.
- 98 Section 12 GLB, ASIC Act; s. 86D of the Trade Practices Act.
- 99 Sections 12CA-CC, ASIC Act; ss. 51AA-AC, Trade Practices Act.
- 100 Section 12DA, ASIC Act, s. 52, Trade Practices Act.
- 101 Section 12GF, ASIC Act, ss. 82 and 87(2)(d), Trade Practices Act.
- 102 Section 12GD, ASIC Act; s. 80, Trade Practices Act.

# Appendix A: ACCC and ASIC— debt collection roles and contact details

# Australian Competition and Consumer Commission (ACCC)

The ACCC is responsible for dealing with misconduct associated with debt collection activity when the debt does not relate to providing a financial service. This includes debts:

- for providing telephone or other utility services
- for the services of trades and professional people

when a retailer does not require immediate payment for a product (but not when the customer enters into a finance arrangement as that will be ASIC's responsibility).

The ACCC's responsibilities also include debts arising from deferred payment (for example, a customer who is billed monthly or given an extension of time to pay).

The ACCC's responsibilities cover any alleged undue harassment, coercion or unconscionable conduct regarding the collection of the debt and any misrepresentations made about the debt. They extend to debts relating to goods and non-financial services which have been assigned or sold to a third party (for example, a debt buy-out company).

The ACCC is also responsible for any misleading or deceptive conduct relating to the actual good or service.

#### ACCC contact details

For matters relating to the types of debt given above, contact the ACCC.

For all business and consumer inquiries:

ACCC Infocentre: 1300 302 502

ACCC website: www.accc.gov.au

National Office

PO Box 1199

**DICKSON ACT 2602** 

Tel: (02) 6243 1111

Fax: (02) 6243 1199

# Australian Securities and Investments Commission (ASIC)

ASIC is responsible for dealing with misconduct associated with debt collection activity when the debt relates to providing a financial service. This includes debts relating to:

- credit card accounts
- home loans, personal loans and loans sourced through retailers (for example, for motor vehicles, household goods and other purposes)
- fees for providing financial advice, insurance and other financial products and services.

ASIC's responsibility covers any alleged undue harassment, coercion or unconscionable conduct regarding the collection of the debt and any misrepresentations made about the debt. It extends to debts relating to a financial service which have been assigned or sold to a third party (for example, a debt buy-out company).

If there is misleading or deceptive conduct relating to the actual good or service (such as the car or the appliance) and not the debt, this will be referred to the ACCC.

#### ASIC contact details

For matters relating to the types of debt given above, contact ASIC.

ASIC's Infoline: 1300 300 630 or

infoline@asic.gov.au

ASIC's consumer website: www.fido.gov.au.

Go to How to complain to make a complaint on line.

Address for written complaints:

ASIC Complaints
Australian Securities and Investments Commission
PO Box 9149
TRARALGON VIC 3844
FAX: (03) 5177 3749

### Overlapping areas

In some situations, a complaint may relate to a range of debts, including both debts for financial services and debts for a good or non-financial service. The ACCC and ASIC have agreed to coordinate any action when debt collection conduct involves such overlapping jurisdiction.

For more information about the respective responsibilities of ASIC and the ACCC over debt collection, see the joint brochure Complaints about debt collection activity—the responsibilities of Commonwealth agencies. For a copy, contact either the ACCC or ASIC using the phone numbers provided above, or visit the ACCC or ASIC website.

# Appendix B: Other statutory and common law obligations and remedies

Apart from the Commonwealth consumer protection laws (See part 3 of this guide), there are a range of other statutory and common law obligations and remedies that potentially affect collectors' operations. 103 These include (but are not limited to) the following listed below.

Because this guide does not have legal force, read it subject to the rights and obligations imposed by the following and any other applicable laws and/or mandatory codes to the extent of any inconsistency.

### State and territory fair trading laws

These laws<sup>104</sup>, based on the *Trade Practices Act 1974*, contain similar misconduct prohibitions to those set out in the Commonwealth legislation. However, the harassment and coercion provisions of the *Fair Trading Act 1999* (Vic.) and *Fair Trading Act 1992* (ACT) also deem that certain specified conduct constitutes undue harassment and coercion. <sup>105</sup> Consumer Affairs Victoria has also published *Guidelines for debt collection* under the *Victorian Fair Trading Act (1999)*. <sup>106</sup> There may be other state and territory laws relating to consumer protection that are relevant to the collection context as well.

<sup>103</sup> It should be noted that these laws apply to activities within their respective jurisdictions, even if the collector is physically located in another state, territory or country.

<sup>104</sup> Fair Trading Act 1987 (ACT), Fair Trading Act 1987 (NSW), Consumer Affairs and Fair Trading Act 1990 (NT), Fair Trading Act 1989 (Old), Fair Trading Act 1987 (SA), Fair Trading Act 1990 (Tas.), Fair Trading Act 1987 (WA).

<sup>105</sup> See s. 21(2), Fair Trading Act (Vic.) and s. 26(2), Fair Trading Act (ACT).

<sup>106</sup> Available at ww.consumer.vic.govau.

### State and territory licensing of collectors

Most state and territory jurisdictions have occupational licensing requirements applying to a range of persons involved in collection. 107 These laws impose certain obligations on licensees, and set out grounds on which the relevant authority can refuse to grant or cancel a licence. In Queensland, licensed commercial agents are subject to a mandatory code of conduct, the Commercial Agency Practice Code of Conduct. 108 In other jurisdictions conduct requirements may be imposed under the legislation itself.109

### The Uniform Consumer Credit Code [UCCC]

Uniform state and territory legislation regulates consumer credit contacts and related transactions (including mortgages, guarantees, consumer leases and credit-related insurance). It imposes pre-contractual, contractual, and post-contractual form and disclosure obligations on credit providers, as well as some limitations on the contractual arrangements that may be entered into. It also regulates the termination and enforcement of contracts and related securities. Some important aspects of the UCCC in the context of debt collection include its provisions on: obtaining account information and documents110; varying repayments on grounds of hardship111; and enforcement of credit contracts, mortgages and guarantees.112

### State and territory unauthorised documents laws

Unauthorised documents acts in each state and territory<sup>113</sup> make it an offence to design collection letters of demand in a way that makes them look like court documents.

<sup>107</sup> Commercial Agents and Private Inquiry Agents Act 2004 (NSW), Commercial and Private Agents Licensing Act 2002 (NT), Property Agents and Motor Dealers Act 2000 (Old), Security and Investigation Agents Act 1995 (SA), Security and Investigation Agents Act 2002 (Tas.), Private Agents Act 1966 (Vic.), Debt Collectors Licensing Act 1964 (WA).

<sup>108</sup> Property Agents and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulation 2001 (Qld).

<sup>109</sup> For example, s. 25 (Harassment), Commercial Agents and Private Inquiry Agents Act 2004 (NSW).

<sup>110</sup> See part 2, section 10 of this guideline.

<sup>111</sup> See part 2, section 13 of this guideline.

<sup>112</sup> See Part 5 of the UCCC ("Ending and enforcing credit contracts, mortgages and guarantees").

<sup>113</sup> City of Cauberra Arms Act 1932 (ACT), Unauthorised Documents Act 1922 (NSW), Flag and Emblem Act 1985 (NT),
Badge, Arms, Floral and other Emblems of Queensland Act 1959 (Qld), Unauthorised Documents Act 1916 (SA), Unauthorised
Documents Act 1986 (Tas.), Unauthorised Documents Act 1958 (Vic.), Unauthorised Documents Act 1961 (WA).

### State and territory limitation of actions laws

Each state and territory sets limitation periods on debt recovery actions.<sup>114</sup>
These generally bar a remedy to the creditor if a defence pleading expiration of the limitation period is filed. In the case of simple contracts (which include the majority of debts referred for collection) the limitation period is normally six years. (In the Northern Territory, a three-year period applies.) In some jurisdictions, a payment or acknowledgment of the debt will re-start the limitation period even after the original period has expired. Limitation Acts also regulate the enforcement of court judgments.

### Bankruptcy laws

Under the Bankruptcy Act 1966, administered by the Insolvency and Trustee Service Australia, on bankruptcy or acceptance of a Part IX debt agreement or a Part X personal insolvency agreement, a bankrupt/debtor is released from their financial obligations for provable debts. Most unsecured debts will be provable. Further action to recover provable debts directly from the bankrupt/debtor is not permitted—any further recovery must be through the scheme of administration under the Bankruptcy Act.

### Privacy laws

Part IIIA of the *Privacy Act 1988 (Cwlth)* governs the handling of credit reports and other credit-worthiness information about individuals by credit reporting agencies and credit providers. Some of the requirements include what information can be stored on a credit report, how long such information can be included, and to whom and under what circumstances access is allowed.

The National Privacy Principles also regulate certain private sector entities in their dealings with personal information. These provisions of the Privacy Act, where applicable, regulate the collection, use and disclosure of personal information, and impose obligations on organisations to maintain accurate, complete and up-to-date records, and allow access by the individual concerned to the information held about them.

<sup>114</sup> Limitation Act 1985 (ACT), Limitation Act 1969 (NSW), Limitation Act 1981 (NT), Limitation of Actions Act 1974 (Qld), Limitation of Actions Act 1936 (SA), Limitation Act 1974 (Tas.), Limitation of Actions Act 1958 (Vic.), Limitation Act 1935 (WA).

The Privacy Commissioner has issued a legally binding Credit Reporting Code of Conduct, and from time to time, the Privacy Commissioner also issues determinations that may affect the collection industry.

### Tort law

Collectors who engage in extreme conduct may expose themselves to civil action in tort by a debtor. Depending on the circumstances, action for trespass, assault, wilful infliction of mental injury, nervous shock and defamation (among others) may apply.

### Criminal law

Collectors who engage in extreme conduct may be charged with criminal offences including assault and demanding with menaces. A collector who refuses to leave a person's property may also be charged with trespass.

### Other obligations

Collectors who are unsure of their obligations under any of the above-mentioned laws, mandatory codes and other arrangements should seek more information from the relevant regulator and/or obtain legal advice.

You should also be aware of the requirements of any voluntary code of conduct or similar instrument to which you subscribe and of the relevant rules of any trade association or professional body to which you belong.

### Appendix C: Glossary

Agent: for the purposes of this guideline, a person who has the express, implied or ostensible authority to undertake collection activity on behalf of a creditor in circumstances where a debt has not been sold or assigned.

Assigned debt: for the purposes of this guideline, any debt which has been sold, assigned, or factored by a creditor, or for which a creditor has in any other way subrogated their rights as a creditor.

Assignee: for the purposes of this guideline, a person undertaking collection activity after the sale, assignment or factoring of a debt, or the subrogation of rights by a creditor to this person.

Authorised representative: a person such as a financial counsellor, solicitor, financial advisor, carer, trustee or guardian who has been authorised by the debtor to act on behalf of the debtor.

Bankrupt: a person who has been declared bankrupt under the provisions of the Bankruptcy Act 1966 and has not been discharged from the bankruptcy.

Collector: a person collecting a debt in the course of a business. It includes creditors, independent collection agencies, collections departments within businesses, debt buy-out companies, assignees, agents, lawyers, government bodies engaged in trade or commerce, court officials, and other persons<sup>115</sup> collecting on behalf of others.

Communicate: unless otherwise specified, includes communication by telephone, mobile telephone, fax, email, letter and in person.

Complaint: for the purposes of this guideline, this term is generally used for issues of collector or creditor conduct (as distinct from issues of debtor liability: see 'Dispute' on p. 57).

<sup>115</sup> The Trade Practices Act applies to corporations or individuals when they are acting as agents of a principal that is a corporation.

Credit listing: for the purposes of this guideline, the listing of an unpaid debt on a person's credit report.

Creditor: a person to whom a debt is incurred. In this guideline, the term continues to apply to the person to whom the debt is incurred despite the sale, assignment, factoring or outsourcing of the debt.

Credit report: any record or information, whether in a written, oral or other form, that

- is being or has been prepared by a credit reporting agency
- has any bearing on an individual's:
  - eligibility to be provided with credit or
  - history in relation to credit or
  - · capacity to repay credit
- · is used, has been used or has the capacity to be used for the purpose of serving as a factor in establishing an individual's eligibility for credit. 116

Debt: an amount of money owed. For the purposes of this guideline, it includes an alleged debt.

Debtor: a natural person obligated or allegedly obligated to pay a debt.

Dispute: for the purposes of this guideline, this term is generally used in relation to issues of debtor liability (as distinct from issues of collector or creditor conduct see 'Complaint'.

Judgment debt:117 means a debt confirmed by an order or judgment of a court.

Reasonableness: is assessed according to an objective standard, taking into account all relevant circumstances.

Security interest: an interest in or a power over goods or land (whether arising by or under an instrument or transaction or arising on the execution of a warrant issued under the relevant state or territory legislation) which secures payment of a debt.

Statute-barred debt: a debt for which the debtor is entitled to claim an absolute defence to legal proceedings to collect the debt due to the passage of time (as set out in the relevant statute of limitations). 118

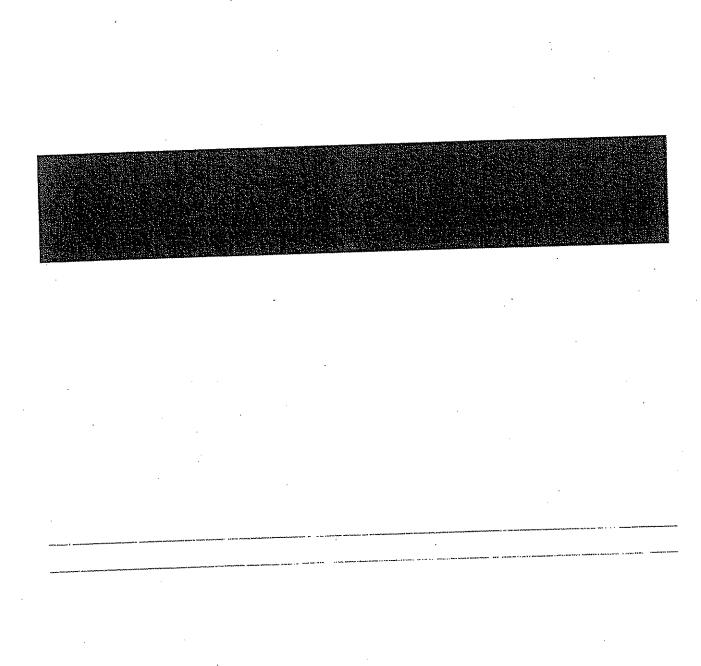
<sup>116</sup> Section 6(1), Privacy Act 1988.

<sup>117</sup> These may go by different names in different states. For example, in Queensland, judgment debts are referred to as Money Orders.

<sup>118</sup> See appendix B, Limitation of actions laws'.

Third party: any person other than the debtor, but does not include a debtor's legal representative, trustee, or other authorised representative. Nor does it include a related entity of the collector.

Undue harassment: please refer to the section entitled Prohibition of the use of physical force, undue harassment and coercion' in part 3 of this guideline.



· . .

### Attachment 2

Terms of Appointment of Independent Consultant pursuant to Enforceable Undertaking which the GE Money companies gave to ASIC on [insert date] ("the Enforceable Undertaking")

[on GE Money letterhead]

### Definitions and interpretation

- The definitions used in the Enforceable Undertaking apply equally to the terms of appointment unless otherwise indicated.
- 2. The terms of appointment are to be interpreted so as to be consistent with the Enforceable Undertaking but in the event of inconsistency then the terms of the Enforceable Undertaking shall take precedence.

### Background

- 2. Pursuant to clause 3.5 of the Enforceable Undertaking the GE Money companies must:
- 2.1 appoint an Independent Consultant to review, assess and make recommendations as set out in clause 3.2b and 3.4b below in relation to the Debt Collection Business and prepare the First Report and, if required by clause 3.6 of the Enforceable Undertaking, the Second Report;
- 2.2 appoint the Independent Consultant before 20 June 2008;
- 2.3 obtain ASIC's approval in writing for the appointment of the Independent Consultant.

### Obligations of the Independent Consultant

- 3. [Insert name and business address of Independent Consultant] having been approved by ASIC for the purposes of the Enforceable Undertaking will take the following steps:
- 3.1 review the following key compliance systems, processes and procedures, staff training and information recording systems including the operation of Beacon ("Compliance Systems") of the Debt Collection Business:
  - (a) the controls in place with respect to call frequency, timing, location and parties;
  - (b) the complaints handling process, including a review of a selection of customer files of the GE Money companies which have been recorded in Beacon;
  - (c) compliance governance processes, including roles and responsibilities, accountabilities and reporting;

- (d) the breach and incident management process;
- policies and processes relating to the training and competency of relevant staff;
- (f) processes in place in relation to repayment arrangements and applications for hardship;
- (g) performance management and consequence management processes as they relate to compliance

(together, "External Review Processes") in order to assess whether there has been a failure to comply with the Regulatory Guidelines in the Debt Collection Business and whether there are deficiencies in the operation of the Debt Collection Business as described in the ASIC concerns.

- prepare, following the initial review referred to in paragraph 3.1 above, the First Report to be completed within 3 months of the execution of this Enforceable Undertaking which:
  - a. sets out the Independent Consultant's findings as to the matters referred to in clause 3.1;
  - b. makes recommendations as to the steps necessary to remedy any Breaches including as to the timeframe within which such steps may reasonably be taken;
  - c. otherwise fully complies with paragraph 5;
- 3.3 consider, if applicable, the First Action Plan prepared by the GE Money companies in accordance with clause 3.6.2 of the Enforceable Undertaking and promptly provide to the GE Money companies and ASIC any further recommendations in writing as to the steps and timeframes referred to;
- prepare, if so instructed by the GE Money companies in accordance with clause 3.6.4 of the Enforceable Undertaking, the Second Report within 1 year of execution of this Enforceable Undertaking which adheres to the External Review Processes and
  - a. assesses the extent to which the GE Money companies have complied with the First Action Plan;
  - makes recommendations as to the steps necessary to remedy any noncompliance with the First Action Plan including as to the timeframe within which such steps may reasonably be taken;
  - c describes any changes made by the GE Money companies to the Compliance Systems since the First Report and assesses the operational effectiveness of those changes;
  - d. otherwise fully complies with paragraph 5; and
- 3.5 prepare the Two Year Review within 2 years of execution of this Enforceable Undertaking which adheres to the External Review Processes and which:

- a. sets out the Independent Consultant's findings as to the matters referred to in clause 3.1;
- b. makes an assessment of the extent to which the steps described in the GE Money Statutory Declaration have or have not been taken; and
- otherwise fully complies with paragraph 5.

### Termination of the terms of appointment

- 4. If, at any time prior to the completion of the Reports (as applicable) or the Two Year Review either:
  - a. both the GE Money companies and ASIC agree that the Independent Consultant is unavailable or unsuitable to perform any tasks remaining pursuant to the terms of appointment; or
  - b. ASIC shall reasonably so direct;

then the GE Money companies will terminate the terms of appointment forthwith by notice in writing to the Independent Consultant and provide a copy of such notice to ASIC.

### Report content

- The Independent Consultant shall ensure that the Reports (as applicable):
- are prepared in accordance with the Enforceable Undertaking and if there is any inconsistency between these terms of appointment and the Enforceable Undertaking then the Enforceable Undertaking shall prevail;
- 5.2 set out the steps the Independent Consultant has taken to fulfill his or her tasks, including but not limited to:
  - a. listing the personnel of the GE Money companies that have assisted the Independent Consultant and the nature of that assistance;
  - otherwise listing the personnel of the GE Money companies that have been interviewed;
  - c. listing the documents that have been reviewed;
  - d. set out the nature and extent of the testing of the compliance systems undertaken by the Independent Consultant to complete the Reports and the Two Year Review;
  - e. set out any limitations or qualifications to the investigations made for the purposes of the Reports and the Two Year Review;
  - f. list those documents or extracts of documents most relevant (in the view of the Independent Consultant) in the preparation of the Reports and the Two Year Review; and
  - g. otherwise state adherence (to the extent applicable) to those paragraphs of the Federal Court of Australia Practice Direction entitled "Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia" that fall under the

sub-heading "The form of the expert evidence" and which are attached to these terms of appointment .

### Independence

- 6. By signing the counterpart of this terms of appointment the Independent Consultant warrants that:
- the Independent Consultant and the individuals who will assist the Independent Consultant ("the Independent Consultant's staff") are independent of the GE Money companies and will at all material times be capable of exercising objective and impartial judgment in the preparation of the Reports and the Two Year Review; and
- 6.2 the Independent Consultant will notify the GE Money companies and ASIC immediately if the Independent Consultant or the Independent Consultant's staff are no longer capable of exercising objective and impartial judgment in relation to the terms of appointment

[Signed for the GE companies]
[Signed by the Independent Consultant]

# NON-FINANCIAL LOSS ASSESSMENT TABLE: DEBT COLLECTION

Investments Commission in May 2008 for determining appropriate levels of compensation for non-financial damage which has been claimed in relation This document is intended to be used as a guideline by GE Money in relation to an Enforceable Undertaking given by it to the Australian Securities and to inappropriate debt collection activity. This document is not intended for any other purpose and should not be used for any other purpose except with the express written permission of the Banking and Financial Services Ombudsman Limited ("BFSO"). The document is current as at 31 December 2007, but the views expressed by the BFSO in this document are subject to change.

collection. In doing so, the BFSO has referred to the ACCC's 1999 Debt Collection Guidelines and the ACCC/ASIC 2005 Debt collection guideline: for The table below has been prepared by applying the assessment criteria for non-financial loss claims considered by the BFSO to the specific area of debt collectors and creditors ("Guidelines") and to relevant Federal, State and Territory legislation regulating collection activities.

The inappropriate collections activities described in the Guidelines and statutes have been broken down into four categories providing graduated levels of the seriousness of the conduct in question, from less serious manifestations of the conduct (Level 1), through to conduct that could be described as more serious (Level 3+). These levels are intended to be used as a guide for determining the amount of compensation that should be paid for nonfinancial damage suffered as a result of the type of activity described

### Assessing non-financial damage

In making awards of non-financial loss, the Ombudsman can consider claims for distress, inconvenience, anxiety and disappointment. It is only in limited circumstances that such compensation is considered and awards are generally not substantial.

with a problem, to bear the ordinary and normal degree of inconvenience associated with correcting an unexpected problem and take reasonable steps to financial affairs are in order in the ordinary course of the transactions concerned. Disputants need to be moderately robust in the way in which they deal In assessing whether an award may be made for such loss or damage, the Ombudsman expects disputants to take responsibility for ensuring that their minimise the inconvenience suffered.

Factors to be taken into account in assessing a claim for non-financial loss may include the extent of actual physical inconvenience, including the length of time it persisted and its degree, the extent to which the disputant used his/her time to rectify the situation and the extent to which the disputant's expectation of enjoyment and peace of mind was interfered with for reasons beyond the disputant's control.



Section 60 Trade Practices Act 1974 (Cth), Section 12DJ Australian Securities and Investments Commission Act 2001 (Cth), Section 26 Fair Trading Act 1992 (ACT), Section 55 Fair Trading Act 1987 (NSW), Section 50 Fair Trading Act 1989 (Qld), Section 26 Fair Trading Act 1990 (Tas), Section 43 Fair Trading Act 1987 (SA) and section 21 Fair Trading Act 1999 (VIC)

Claims for simple inconvenience are not sufficiently substantial to warrant compensation. The Ombudsman does not consider claims for medical (including psychological and psychiatric) damage, which are best dealt with by a court.

In this table we use the term "non-financial damage" to describe the claim being considered.

Application to inappropriate debt collection activities.

Conduct of the type described in this table would not automatically give rise to an award against the collector to pay compensation for non-financial damage in relation to "Level 1

". However, where it is determined by the Ombudsman that, having regard to the matters above, compensation is warranted, the amount of compensation would be determined by reference to the effect that the conduct had on the disputant

limited circumstances a minimal amount. This is conduct that we consider would cause only mild inconvenience for a short time, and that a moderately In terms of assessing non-financial damage, it is anticipated that conduct described in "Level 1" would in most cases warrant no compensation, or in robust person would bear. Compensation for conduct described in this column where the actual effect is beyond what we expect a moderately robust person ought to bear would not usually be more than \$250.

Conduct described in "Level 1-2" is considered more likely to cause a level of non-financial damage beyond that which a moderately robust person However, the conduct would not ordinarily cause a high level of non-financial damage. It is anticipated that activities in this range would warrant ought to be expected to bear, and require that person to take more steps than he or she should have to, or to take more time to resolve or deal with. compensation of between \$250 and \$500.

Conduct described in "Level 2-3" is considered more likely again to cause greater non-financial damage to the debtor, requiring more time to sort out. This conduct could be expected to result in compensation of between \$500 and \$1,000.

because the conduct described would, on any objective assessment, usually cause a high degree of non-financial damage, or require a high level of effort Conduct described at "Level 3+" would be expected to result in non-financial damage sufficient to warrant compensation of, or in excess of \$1,000, and/or time to deal with.

It ought not to be assumed that in all cases Level 1 conduct would always result in compensation of \$250 or less. However, in the experience of this office, that amount is the maximum that would usually be awarded in respect of the activity described and compelling information to demonstrate a higher level of non-financial damage would need to be provided by the disputant in order to warrant a higher amount.

Similarly, conduct described in the Level 3+ column would usually require payment of a relatively high amount of compensation. In the absence of compelling information from the collector to demonstrate that the debtor suffered much less inconvenience or stress than a person subjected to the conduct described ordinarily would, the collector should expect to pay compensation in excess of \$1,000. As awards of compensation for non-financial loss may not be punitive, the table is not intended to amount to a strict liability list of penalties. It is intended to focus on the effects of the conduct on the disputant.

While the table has been prepared with the intention of covering the broadest possible range of inappropriate activities, it is possible that there are other circumstances which may arise and which would not be covered. These would need to be dealt with on a case-by-case basis.

The document is intended to be read in the following way:

- The first question is whether the conduct claimed by the debtor has been established as a question of fact (including whether any exception
- Level column in which it is described indicates the likely amount of compensation to be paid where non-financial damage is demonstrated in the If the actual conduct engaged is as described in the table, or bears a close resemblance to the conduct described in a particular column, then the particular circumstances of the case; d
- compensation in the range for that column is considered appropriate. However, in some cases it may be that the descriptor in the level column In the absence of compelling information to demonstrate that a debtor suffered more or less non-financial damage than the column indicates, applies as a question of fact but that for the particular disputant the non-financial damage experienced was more or less and the amount of compensation offered or paid should be adjusted accordingly; and

'n

As there may be overlap where the relevant events which amount to the conduct could fall within one or more table entry, it will be necessary to consider the nature of the conduct, the time frame involved and any interrelationship between the types of conduct when determining whether circumstances. In cases where there is more than one inappropriate activity which amounts to conduct giving rise to compensation, we will have regard to the individual conduct, the level of demonstrated non-financial damage and weigh up what amount is appropriate in all the separate amounts will be awarded for each or whether a single award would be made which compensates for all of the events.

This table ought to be treated as a starting point for the resolution of disputes and be applied on a case by case basis.

## NON-FINANCIAL LOSS ASSESSMENT TABLE: DEBT COLLECTION

			7	C 1 C 1 C 1
	71 0.00	F,evel 1-23	Level 2-3	Level 31
Conduct				
Contacts with the aebtor (may include contact by telephone, SMS, email or message				
services)		7.3 occasions or time	More than 3	Numerous occasions
1. (a) Pre October 2005 - Contact before	I occasion, unie	within a few minutes	occasions, within a	and more than 15
7.30am or after 9pm unless the debtor has	of designated times.	of designated times.	few minutes of	minutes of designated
agreed or otherwise reasonable. Strong a		-	designated times.	times.
contact during mose mous new coort				
attempted over a reasonable peaker or many				
using less intrusive methods.		· ·		
(b) Post October 2005 - Contact before 7:30				
an or after 9pm on a weekday or before 9am	.,		-	
or after 9pm on a weekend unless the debtor		·		
has agreed or otherwise reasonable* efforts				www
at contact during those hours has been				
attempted over a reasonable* period or time			- AUG94 - MA	
using less intrusive methods (no contact to be				
made on National Public Holidays).				-
*What is reasonable is to be assessed		-		
objectively on a case-by case basis.				
Matters to be taken into consideration would				
be the length of time over which contact				
within the hours has been attempted, the				
number of attempts, the type of contact				
aftennited (including written contact).				
Attempted contact is dealt with in section				,
4				

<sup>2</sup> Level 1: Conduct which would ordinarily warrant no compensation or, in some circumstances, a minimal amount of less than \$250 <sup>3</sup> Level 1-2: Conduct likely to result in compensation of between \$500 and \$1,000 <sup>4</sup> Level 2-3: Conduct likely to result in compensation of between \$1,000. <sup>5</sup> Level 3+: Conduct likely to result in compensation of more than \$1,000.

		The state of the s		T arroll 2.1
	Level 1	Level 1-2		בייייייייייייייייייייייייייייייייייייי
Conduct 2. Contact at time or place that the debtor	T	ve m available	Alternative mechanism	Alternative mechanism available and more
has requested no contact, or using	mechanism available		all is	serious consequences
mechanism debtor has asked not to be used	threatening	non-financial	lengthy and/or	flow from contact. Eg.
Where an effective: alternate investmental as	discussion.	damage. Eg. work	intrusive and	workplace discipline,
available.		colleagues, family	contact results in	relationship breakdown
*Effective ineals a inconamism and		become aware of	non-financial	caused or exacerbated
result in confact being maye.		debt.	damage.	as a result of the breach.
3. Contact at work place where no specific	Alternative	Alternative	More than one	Alternative mechanism
request to contact at work and where there is	mechanism available	mechanism available	alternative	contacts at workplace
an alternative and effective* mechanism	and short, non	non-financial	mechanism	or contact results in
(unless debtor is proprietor or director of	discussion.	damage. Eg. work	available, call is	more serious
business to which debt relates).		colleagues become	lengthy and/or	consequences. Eg.
*HIECIIVE IIICAIS & IIICAISIII MAN TOTAL		aware of debt or work	intrusive and/or	workplace discipline.
Tesuit an comact owns mans:		interrupted or delayed	debtor requests no	
		briefly.	contact at the worknlace.	
1 22			W.C.T.W.C.C.	
Personal Visits	Brief discussion and	No current phone	Phone number held,	Phone number held, no
4. Personal Visit as litst political acor	arrangements for	details held for	no letter sent or	letter sent or phone call
conceacin:	alternative mode of	debtor, but letter not	phone call made.	made. The visit has
	contact acceptable to	sent as first point of	Visit is lengthy	serious consequences
	debtor.	call. Visit results in	and/or disruptive or	IOF GEOLOF, eg Misseu   ganginfment Tafe fo
		short term distuption	nillusive and at	
		n upset.	ĮAVOOTIN:	friends/family.

	* F	avol 1-2.	Level 2-3	Level 3+
isit to debtor e 7.30am or after sed that visits aptable. sit to debtor away a or after 9pm hat visits outside	Level 1 1 occasion, time within 5-10 minutes of designated times.	sions or 10-15 of designated	More than three occasions, but within 5-10 minutes of designated times.	Numerous occasions and more than 10-15 minutes of designated times.
these times are acceptable.  6. Visits to debtor at workplace outside the debtor's usual working hours if known or otherwise before 9am or after 5pm* unless the debtor has advised that visits outside these hours are acceptable.  *Where the debtor's usual work hours are not 9am to 5pm, the relevant times for consideration will be the known working hours.	l occasion, within a few minutes before 9am or after 5pm, with little or no impact on debtor.	I occasion within a few minutes before gam or after 5pm and work interrupted or delayed briefly, or debtor disadvantaged by visit.	2-3 occasions, within a few minutes before 9am or after 5pm, or one occasion more than 10 minutes outside those times, and work interrupted or delayed briefly, or debtor disadvantaged by visits	2 or more occasions with visits more than 10 minutes before 9am or after 5pm and work interrupted or delayed, or debtor disadvantaged by visits.
7. Visit to debtor's home or workplace where debtor has requested that not be done and debtor has provided an alternative and effective* method of contact or where face to face visit not appropriate, (eg collector on notice of serious illness or mental incapacity).  *Effective means a mechanism that would result in contact being made.	Alternative mechanism available. Short discussion. Visit ends if requested by debtor.	Alternative mechanism available and contact results in non-financial damage. Eg. family/friends/ work colleagues become aware of debt or activities/work interrupted or delayed briefly or debtor's condition exacerbated or debtor		Alternative mechanism available and numerous visits at workplace or visits results in more serious consequences. Eg. workplace discipline or debtor's condition exacerbated or debtor disadvantaged.

Conduct N/A N/A				
peen			Collector remains on property and/or leads to others (eg family/friends/work colleagues) becoming aware of debt and/or debtor's activities or work interrupted or delayed.	Collector remains on property for more than 10 minutes and leads to more serious consequences. Eg relationship breakdown or workplace discipline.
9. Remaining in the vicinity of the debtor's location for an extended period of time for the purpose of intimidating or embarrassing the debtor or for the purpose of creating the impression that the debtor is under surveillance. (If threatening language to use violence or physical force in relation to any person or property determine under 40 or		N/A		
41).  Frequency of Communications 11. Pre October 2005 - More than 10 unsolicited telephone calls* in one month including calls where debtor terminates call, unless legitimate reason for doing so.  *See note 10 Attempted contact is dealt with in section 14.	11-12 in one month	13-14 in one month	15-20 in one month	More than 20 in one month.

	port vec	betermined by reaction of debtor and/or effect on activities including work and/or relationships. Eg Relationships. Eg Relationship breakdown, inability to attend to work duties, entering into voluntary bankruptcy to stop contact where the debt is the only debt owed and bankruptcy would not have been declared but for the activity.
10 or less in one mouth but 6 in one week.	15-20 in one month	Effect on activities including work and/or relationships including stress, relationship strain, difficulty in attending to work duties.
10 or less in one month but 5 in one week.	13-14 in one month	Effect on activities including work and/or relationships, such as stress, loss of peace of mind, moderate inconvenience, such as missed appointment.
10 or less in one month but 4 in one week.	11-12 in one month	NA.
12. Post October 2005 – More than 3 contacts* by telephone and/or in writing in one week per account.  *See note 10 Attempted contact is dealt with in section 14.	13. Post October 2005 – More than 10 contacts* by telephone and/or in writing in one month per account.  *See note 10	Attempted contact is dealt with in section 14.  14. Causing a telephone to ring repeatedly or continuously where collector knows or ought to know the debtor does not wish to discuss by telephone and it is established that debtor is aware of calls.  *Calls to mobile numbers should be assumed to result in Caller Number Display, so that the debtor is aware of the actual number called from. Whether the debtor is aware of the caller to home phone number should be determined on the facts of the particular case.

and by Determined by reaction of debtor frect on and/or effect on activities including work and/or relationships.  Tresults in difficulty with work and/or relationship.  Ship or peace Eg. inability to perform work and concern effectively.  The effectively with and/or relationship.  Eg. inability to perform work effectively.  The effectively with work and concern and concern and concern effectively.		The state of the s	7 7 7	Loval 2.3	Level 3+	
a telephone N/A Determined by reaction of debtor of and/or effect on and/or relationships.  Conduct results in some difficulty with work and/or relationship or peace of mind. Eg perform work and/or relationship. Trelationship or peace of mind. Eg perform work and/or relationship.  35 - More than one N/A 2 visits. 3 visits.  — More than one week.  — More than one week.		Level 1	revel 1-2	LICYCE ALS	Determined by reaction	
e N/A 2 visits. 3 visits.	Sonduct Sonduct Conversation repeatedly.	N/A	Determined by reaction of debtor and/or effect on activities including work and/or relationships. Conduct results in some difficulty with work and/or relationship or peace of mind. Eg appointment missed, worry and concern etc.	Determined by reaction of debtor and/or effect on activities including work and/or relationships. Conduct results in difficulty with work and/or relationship. Eg. inability to perform work effectively.	of debtor and/or effect on activities including work and/or relationships. Serious disturbance, such as disciplinary action at work, relationship breakdown, considerable stress, resulting in missed work, etc.	
e N/A 2 visits. 3 visits.					bankruptcy to stop contact where the debt is the only debt owed and bankruptcy would not have been declared but for the activity.	
	<ul> <li>16. (a) Pre October 2005 - More than one unsolicited visit to a debtor in one week.</li> <li>(b) Post October 2005 - More than one personal visit per fortnight.</li> </ul>	N/A	2 visits.	3 visits.	More than 3 visits.	

		***************************************	ovo 1.2	Level 2-3	Level 3+
Ľ		Level 1	JOHNS W. W.		
	Conduct			toons of the Constitution	Confact to demand that
	Other Arrangements and Frocesses	71/A	Contact to review	Colliact to suggest	1-1-1
1	17 Contact with debtor where repayment	WW	arrangement within	that debtor should	deptot smoure care
	grangement is in place and is being		2 5 days hefore	enter arrangement	arrangement more
	and with unless (i) contact is requested		J. J. Carlos C.	more favourable to	favourable to creditor
_ *	compliant that made to confirm the		CALLA OL TOPUJ MONTO	creditor (where	and to suggest legal
	by deploy of (at) as assessed to advise the		arrangement	- Carronandi	action or similar will
	details of the arrangement and to details of the			Political	Would if now
	debtor of consequences of non compliance of	_		arrangement is in	Icsuit at atom
	(iii) to provide a statement of account or (IV)			place) or within 5-	arrangement not
	(un) to provide any legal remedies to be pursued			14 days prior to	entered into.
	(1) and are an area wear for the to add the total of the			1 month	Confact to review
	while the arrangement is in place of (1) to			Inalidated 2- arotata	Samont to favouit
	make a legitimate offer of an alternative			review period.	arrangement to tay our
·····	to the debtor or to				creditor more man 14
	all augement of concern and that no less				days prior to mandated
	review the arrangement provided that the	دسمبر			The many and the contract of
	than 3 months have passed since the	1			3- monut review
	grangement agreed or since last review.				period.
	all and control of the second arrangement is				
	*Letter to dedici where an anas				
	nearing conclusion to offer further assistance,	15			ne. Mer
	or promose new arrangement would not be				
	or proposed as confravention of this principle.	***		a de la companya de l	
	Collision as comme				

1, evel 3+	Legally and financially unnecessary significant steps taken to stop contact. Eg. entering into an unfavourable arrangement or making an application for funds/finance from lender or family/friends and seeking advice where debtor may have a good defence (or partial defence) to claim.  Entering into voluntary bankruptcy to stop contact where the debt is the only debt owed and bankruptcy would not have been declared but for the activity.	
	More serious unnecessary steps taken to stop contact. Eg. entering into an unfavourable arrangement or making an application for funds/finance from lender, family or friends where debtor may have a good defence (or partial defence) to claim.	
	Level 1-2  More than 1 contact and/or some minor or preliminary unnecessary steps taken to stop contact. Eg. contact made with legal or financial adviser.	and the state of t
	Level 1  1 contact only and debtor repeats request for no further contact.	
	Conduct  18. Contact with debtor where debtor has in writing denied liability or stated an intention to defend any legal proceedings brought against them and has requested no further contact be made except for written communication that advises the debtor the steps to be taken with respect to legal proceedings or written contact that is genuinely designed to facilitate settlement of the matter or contact with respect to any part of a debt which has not been denied or further contact which is authorised by the debtor.	

-				T.evel 3+	
	Level 1	Level 1-2	Devel 4-3	Demand causes debtor	
Conduct 19. Demanding or persisting in demanding	1 demand only and	More than 1 demand	debtor take more	to take legally	
payment of a debt where the debtor denies	demands cease when	debtor to take some	serious unnecessary		
liability and reasonable enquiries by the	of Hability.	minor or preliminary	steps to stop	stop demadus. Eg	
collector would have such that the		unnecessary steps to	dellianus. Lg	repayment arrangement	
une.		stop demands. Eg	annlication for	or paying debt.	
		Comact many with	funds/finance from	Enfering into voluntary	
		advisor	lender or	bankruptcy to stop	
		auvioci.	family/friends.	contact where the debt	
			•	is the only debt owed	
				and bankruptcy would	
				not have been declared	
				but for the activity.	
	-+	1 nhone call seeking	1 personal visit to	Contact causes debtor	
20. Contact with debtor or TP for payment of	N/A	renavment.	debtor where	to take legally and	
debt or asserting payments due once on		terminated	collector leaves	financially unnecessary	
notice that debtor is bankrupt unless in		immediately upon	immediately upon	significant steps. Eg	
accordance with Bankruptcy Act 1966 (Cin)		request of debtor or	being asked to do	selling an asset, taking	
or where debt statute barred.		unon being reminded	so or reminded of	a loan or making	
	-	of bankruptey or	bankruptcy or of	payments.	
	and the same of th	statute of limitations.	statute of	Entering into voluntary	
			limitations or	bankruptcy to stop	
			contact caused	contact where the debt	
		-	debtor take more	is the only debt owed	
			serious unnecessary		
			steps to stop		
			contact. Eg making	t   but for the activity.	
			an application for		
			funds/finance from	-	
· ·			lender or		
			family/friends.		
		***************************************	And the second s		7

Level 3+  Personal visit to debtor that debtor finds threatening/intimidatin g (or similar) and/or multiple threatening letters/phone calls where representative known to have been appointed.	that debtor finds threatening/intimidatin g (or similar) and/or multiple threatening letters/phone calls where form of appointment appropriate.
Level 2-3  Personal visit and/or multiple letters/phone calls to debtor where representative known to have been appointed.	and/or multiple letters/phone calls to debtor where form of appointment appropriate.
	Calling or writing to debtor where form of appointment appropriate and debtor has expressly stated no direct contact to be made.
f to uch	Gemuine error demonstrated (such as non-receipt of appropriate notice).
Conduct  Communicating with Debtor's  Representatives  21. Communicating with debtor where another person represents debtor in the matter, unless the debtor's representative does not respond within a reasonable time (normally 14 days) or the debtor's representative advises that he or she does not have instructions in relation to the debt, or the representative does not consent to act or where the representative is not a solicitor and where the written authority of the debtor is required for contact and the debtor does not provide that authority, or the debtor specifically requests contact. *While an authority is required for the Creditor to discuss the debtor's financial situation with a third party, no written authority is required to take a direction from the debtor via a third party for the collector to cease telephone contact.	22Placing unnecessary requirements on debtor to appoint agent, including demanding provision of information in excess of what would be required under the Privacy Act 1988 (Cth).  *A collector should not make appointment of an agent unnecessarily difficult for a debtor and should be flexible in seeking confirmation that an agent has been appointed — eg, seeking verbal authority to contact the named agent in order to request

			Level 2-3	Level 3+
Conduct Communicating with Third Parties	Level 1	Pevel 1-6		
Note: 1088 claimed must have			Numerous contacts	Nature of contact with
23. Contact with TP for purpose of seeking location information or to leave message for debtor, where contact occurs at intervals of more than 6 months* and where no disclosure of information is made to TP.# * For contact at intervals of less than six	Contact is not communicated to debtor, or has little or no impact on debtor.	2-3 occasions over an and nature of contact with TP puts debtor at a some disadvantage with TP.	over relevant period of time. Nature of contact with TP puts debtor at a moderate disadvantage with	TP leads to serious consequences for debtor. Eg relationship breakdown caused or exacerbated by breach.
months, use clause 24.			TP.	S an enough propertions
# If disclosure is made to it use of the 24. Contact with TP to seek location information about debtor on more than one occasion within a six month period unless the TP has agreed to further contact or TP has requested the contact.	2 occasions, but contact not communicated to debtor or no or little impact on debtor.	3-4 occasions leading to unnecessary contact between TP and debtor and some disadvantage to debtor.	3-4 occasions. Nature of contact with TP puts debtor at a moderate disadvantage with TP.	with serious consequences for debtor Eg relationship breakdown caused or exacerbated by breach.
messages where known or ought to be known that debtor does not live/work with TP, unless TP has agreed to further contact or has requested further contact.	2 occasions, but contact not communicated to debtor or no or little impact on debtor.	3-4 occasions leading to unnecessary contact between TP and debtor and some disadvantage to debtor.	3-4 occasions and nature of contact with TP puts debtor at a moderate disadvantage with TP.	5 or more occasions and with serious consequences for debtor. Eg relationship breakdown caused or exacerbated by breach.
26. Contact or visits to TP after 9pm and before 7.30am unless contact is authorised by TP.	1 occasion, time within a few minutes before 7.30am or after 9pm with little or no impact on debtor.	I occasion within a few minutes before 7.30am or after 9pm and/or and nature of contact with TP puts debtor at a disadvantage with TP.	2 occasions, but within a few minutes before 7.30am or after 9pm and/or nature of contact with TP puts debtor at a disadvantage with TP.	2 or more occasions and with serious consequences for debtor. Eg relationship breakdown caused or exacerbated by breach.
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without any some discussion which level conflict.	Level 1 Level 1-2 Level 4-3	and to Star four ser four ser can contact by and ng to free seads to free seads to free seads to free for ser for by contact by and ing to w level upset for o actual set or low lict.	THE PORT OF THE PO	Statements lead to a low level upset or has an adverse effect on relationship between the debtor and TP.  N/A  N/A  Contact includes some disclosure or discussion which	mation d by TP and ation ted.  act terminated out any osure or	Conduct  The Conduct Try to obtain information about debtor's focation or other information about debtor's focation or other information about the focation or other information about the focation to a TP including the existence information to a TP including the existence of the debt unless permitted by Privacy Act 1988 (Cth).  29. Communication with TP under 18 years walless authorised by debtor or debtor asks unless authorised by debtor or debtor asks
some disclosure of   faming appear of faming and	No information  No information  No information  No information  Iow level upset or has more serious for adverse conversation  relationship between consequences for relationship between TP and debtor. Eg unnecessary contact by between TP and debtor leading to upset or low level conflict.  N/A  N/A  N/A  Intrastened disclosure leads to for debtor. Eg unnecessary contact between TP and debtor leading to upset or low level consequences for debtor. Eg unnecessary contact between TP and debtor. Eg unnecessary contact between TP and debtor leading to upset or low level conflict or upset for debtor if no actual disclosure.		<u>~</u>	Contact inclu   some disclost	Contact terminated without any	Thunder 18 years
Contact terminated Colliact libratures Contact terminated or low	No information  No information  No information  Provided by TP and low level upset or has provided by TP and relationship between terminated.  terminated.  N/A  N/A  N/A  N/A  Statements lead to a Statements lead to serious for relationship between TP.  Ununcessary contact between TP and debtor leading to upset or low level conflict.  Disclosure or threatened disclosure leads to adverse consequences for debtor. Eg unnecessary contact between TP and debtor. Eg unnecessary contact between TP and debtor. Eg unnecessary contact between TP and debtor leading to unnecessary contact between TP and debtor leading to unnecessary contact between TP and debtor leading to unset for debtor leading to debtor leading to upset or low level conflict or upset for debtor if no actual disclosure.			July tootage	***************************************	and the second s
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debtor if no actual disclosure.  Contact terminated Contact includes Contact leads to family meet or low	No information   Statements lead to a   Statements lead to   Statements lead to a   Provided by TP and   low level upset or has   more serious   Statements lead to an adverse effect on   adverse   conversation   relationship between   consequences for   the debtor and TP.   debtor. Eg   unnecessary contact   between TP and   debtor leading to   upset or low level   conflict.   Disclosure or   threatened   disclosure leads to   adverse   consequences for   debtor. Eg   unnecessary contact   between TP and   debtor. Eg   unnecessary contact   between TP and   debtor leading to   upset or low level   between TP and   debtor leading to   upset or low level   between TP and   debtor leading to   upset or low level   upset o	t or upset for	confl			
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terminated. relationship between consequences for relationship between consequences for can the debtor and TP. unnecessary contact between TP and debtor leading to upset or low level conflict.  N/A N/A threatened sence consequences for consequences for consequences for debtor leading to upset or low level conflict or upset for debtor if no actual disclosure.	Me information Statements lead to a Statements lead to			low level upset (	rovided by TP and	
provided by TP and an adverse effect on consequences for relationship between consequences for relationship between consequences for relationship between adverse from adverse effect on consequences for relationship between TP and debtor leading to upset or low level conflict.  N/A N/A threatened six disclosure leads to fix adverse consequences for consequences for consequences for consequences for consequences for debtor. Eg unnecessary contact between TP and debtor leading to upset or low level conflict or upset for debtor if no actual disclosure.  Contact terminated Contact includes consists to consequence or low level contact leads to constitutions or low level contact leads to constitutions or low level debtor if no actual disclosure.		ad to		Statements lead	Vo information	1
No information  No information  No information  provided by TP and an adverse effect on consequences for relationship between consequences for relationship between adverse from the debtor and TP.  The debtor and TP.  The debtor and TP.  The debtor leading to upset or low level conflict.  N/A  N/A  N/A  Threatened debtor: Eg aumecessary contact for debtor: Eg aumecessary contact between TP and debtor: leading to debtor: Eg aumecessary contact between TP and debtor: leading to upset or low level conflict or upset for debtor leading to upset or low level contact terminated contact includes  Contact terminated Contact includes  Contact leads to consequence or low level contact leads to contact lead		$\top$	$\dashv$			

			Level 2-3	Level 3+
	Level 1	evel 1-4		
Misleading or Deceptive Conduct 30. Making false/misleading representation about collector's identity, including failing to identify creditor or representing that the collector is a bailiff or police officer	Debtor becomes quickly aware that representation is false or misleading.	Demand caused debtor to take some minor or preliminary unnecessary steps taken in reliance. Eg contact made with legal or financial adviser.	d caused to take more unnecessary iken in e on resentation. king ation for refinance ender, family nd, or	Demand caused debtor to take legally <u>and</u> financially unnecessary significant steps taken in reliance on misrepresentation. Eg selling an asset, taking a loan, making payments, declaring bankruptcy.
			costs.	er (en in plant de la company) de la company de la comp
31. Making false/misleading representation about consequences of non-payment.	Debtor becomes quickly aware that representation is false or misleading.	Demand caused debtor to take some minor or preliminary unnecessary steps in reliance. Eg contact made with legal or financial adviser.	Demand causes debtor to take more serious unnecessary steps in reliance on misrepresentation. Eg making application for funds/refinance from lender, family or friend, or incurring legal costs.	Demand causes debtor to take legally and financially unnecessary significant steps in reliance on misrepresentation. Eg selling an asset, taking a loan, making payments, declaring bankruptcy.
32. Giving information about consequences of legal action that is misleading/deceptive or likely to mislead or deceive.	Debtor becomes quickly aware that information is misleading or deceptive.	Demand causes debtor to take some minor or preliminary unnecessary steps taken in reliance. Eg contact made with legal or financial adviser.	Demand causes debtor to take some serious unnecessary steps in reliance on misrepresentation. Eg making application for funds/refinance	Demand causes debtor to take legally and financially unnecessary significant steps in reliance on misrepresentation. Eg selling an asset, taking a loan, making

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	Level 1	Level 1-2	+	navments, declaring
			rrom reducet, rannal   F or friend, or incurring legal   costs.	bankruptcy.
33. Using documents that could mislead the debtor to believe that they are court documents, including serving an unissued summons.	Debtor becomes quickly aware documents are not court documents.	Demand caused debtor to take some minor or preliminary unnecessary steps taken in reliance. Eg contact made with legal or financial adviser.	nd caused r to take more us unnecessary taken in ce on presentation. aking cation for s/refinance lender, family end, or ring legal	Demand caused debtor to take legally and financially unnecessary significant steps taken in reliance on misrepresentation. Eg selling an asset, taking a loan, making payments, declaring bankruptcy.
34. Making false/misleading representations about the amount, character or legal status of a debt including failing to state the amount of the debt, or failing to provide reasonable information about the composition of the debt, or requiring the debtor to prove they are not liable for the debt.	Debtor becomes quickly aware representation is false or misleading or can readily demonstrate no liability.	Demand causes debtor to take some minor or preliminary unnecessary steps in reliance. Eg contact made with legal or financial adviser.	Demand causes debtor to take more serious unnecessary steps in reliance on misrepresentation. eg making application for funds/refinance from lender, family or friend, or incurring legal costs.	Demand causes debtor to take legally and financially unnecessary significant steps in reliance on misrepresentation. eg selling an asset, taking a loan, making payments, declaring bankruptcy.
35. Threatening criminal action if the debt is not paid or engaging in conduct that would lead the debtor to believe that criminal action could be a consequence of non-payment.	Debtor becomes quickly aware the threat is false and is not particularly concerned about the threat.	Debtor becomes quickly aware the threat is false, but is concerned about the threat for a short time. Conduct results	Demand could be reasonably expected to cause debtor to take more serious unnecessary steps in reliance on	Demand could be reasonably expected to cause debtor to take legally and financially unnecessary significant steps in reliance on

			L ovol 7.3	1,evel 3+
A STATE OF THE STA	Level 1	Level 1-2	Act CA A	misranregentation Eg
Conduct		in some difficulty with work and/or	misrepresentation. Eg making	selling an asset, taking
		relationship or peace	application for funds/refinance	a loan, making payments, declaring
		Appointment missed,	from lender, family or friend, or	bankruptcy.
		wordy and concern etc.	incurring legal	
36. Threatening action (legal or otherwise)	Debtor becomes quickly aware	Demand causes debtor to take some	Demand causes debtor to take more	Demand causes debtor to take legally and francially unnecessary
that the collector is not regard formal take or does not have instructions/authority	threatened action is not legally	minor or preliminary unnecessary steps in	serious unnecessary steps in reliance on	significant steps in
to take at the time including pursuant unsecured debt where the debtor is bankrupt	permissible.	reliance. Eg contact made with legal or	misrepresentation. Eg making	misrepresentation. Eg
unless in accordance with Bankruptcy Act 1966 (Cth) or where debt statute barred or		financial adviser.	application for funds/refinance	selling an asset, taking a loan, making
threatening to take possession of property where the debt is unsecured.		·	from lender, family or friend, or	payments.
			incurring legal	٠
				T. T
Coercion	Debtor becomes	Demand causes	Demand causes	Demand causes decom
37. Leading a debtor to beneve man a decision to report an alleged criminal offence		debtor to take some minor or preliminary	serious unnecessary	financially unnecessary significant steps in
nepertus ou uncorre	incorrect.	unnecessary steps in reliance. Eg contact	misrepresentation.	reliance on
		made with legal or	Eg making	misrepresentation. Eg
		tinancial adviser.	funds/refinance	
			from lender, family or or friend, or	payments, declaring bankruptcy.
			incurring legal	1000
7-1111	Dobton bootmes	Demand causes	Demand causes	Demand causes debtor
38. Threatening to list debtor on a blacklist	Debtor becomes	debtor to take some	debtor to take more	to take legally and
Of Oad debts damped at a second				

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Level 3+	financially unnecessary significant steps in reliance on misrepresentation. Eg selling an asset, taking a loan, making payments, declaring bankruptcy.	
Level 2-3	serious unnecessary steps in reliance on misrepresentation. Eg making application for funds/refinance from lender, family or friend, or incuring legal costs.	
[,evel 1-2	minor or preliminary unnecessary steps in reliance. Eg contact made with legal or financial adviser.	
	threatened action is not legally permissible.	
	Conduct which purports to affect a debtor's credit rating, unless permitted by the Privacy Act 1988 (Cth).	

the state of the s	lovo	Level 1-2	Level 2-3	Level 3+
Conduct 39. Using abusive, threatening, offensive, obscene or discriminatory language to debtor or TP. (If threatening language to use violence or physical force in relation to any person or property determine under 40 or 41).	Debtor indicates mild concern at action of collector, but with no evident consequences for debtor/relationship with TP.	Determined by reaction of debtor and/or effect on activities including work and/or relationships.	Determined by reaction of debtor in relationship with TP. Eg. inability to perform work	More severe difficulties caused to debtor. Serious disturbance to relationship, such as disciplinary action at work, relationship breakdown,
		some difficulty with work and/or relationship or peace of mind.	effectively, disturbance to relationship.	considerable stress, resulting in missed work, etc.
40. Using or threatening to use violence or physical force to any person, including	NA	NA	NA	Any instance- amount to be determined by reaction of debtor.
41. Using or threatening to use violence or physical force to property.	NA	NA	NA	Any instance- amount to be determined by reaction of debtor.
Scotion 66 Uniform Consumer Credit Code	***************************************	**************************************		7. 1. 7.
about s 66 of UCCC where debtor requests such.	Debtor would not have qualified.	Debtor would have qualified and took some minor or preliminary unnecessary alternative steps as a result of failure. Eg contact made with legal or financial adviser.	Debtor would have qualified and took more serious unnecessary alternative steps as a result of failure. Eg making an application for funds/refinance from lender or family/friend.	Debtor would have qualified and took legally and financially unnecessary alternative and significant steps as a result of failure. Eg selling an asset, taking a loan, making payments, declaring bankruptcy.