



**Submission in response to options paper:
Debt Collection
Harmonisation Regulation**

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About Care Inc

Care Financial Counselling Service (Care) has been the main provider of financial counselling and related services to low to moderate income and vulnerable consumers in the ACT since 1983. Care's core service activities include the provision of information, counselling and advocacy to low income and vulnerable consumers experiencing problems with credit and debt. In addition, Care has a Community Development, Education and Research program, makes policy and law reform comment on issues of importance to its client group and has operated the ACT's only No Interest Loan Scheme since 1997.

The Consumer Law Centre of the ACT (CLC) is a project of Care that offers legal assistance in the area of credit and debt, consumer protection and fair trading. In addition to casework, the CLC advocates and provides policy comment on local, territory and national issues to improve legal protection, and raise awareness and understanding of consumers' rights in the ACT.

Across Care's service delivery programs, the agency responds to over 2000 new requests for assistance every year.

General Comments

Due to our involvement in supporting low income consumers, we will only provide submissions in the areas of debt collection harmonisation that will have an impact on consumers.

During the submission phase relating to the reform of credit and consumer laws within Australia, we supported the need to harmonise credit and consumer protection laws across Australia, in order to provide consistent and more stringent protection for Australian consumers. We also support a national approach to the regulation of debt collection. This will provide consistency across Australia, and enable consumers, and groups that support consumers, to more clearly understand their rights and responsibilities in relation to debt collection.

Care and the CLC are cross-jurisdictional services. Whilst the majority of our client group reside in the ACT, we also offer services in Queanbeyan and surrounding South East NSW. Many other financial counselling services and/or consumer law centres would similarly offer services in more than one state or territory. Consistent debt collection practices across all jurisdictions will maximize efficiency for both consumers and advocates.

As a general statement, we support the strongest option for licensing/regulation in each of the areas of debt collection that relate to consumers. Strong and robust regulation will provide:

- The maximum protection for consumers, many of whom are vulnerable members of our society with complex financial circumstances and often multiple stressors in their lives.
- A clear and coherent system with legally enforceable remedies. It is the view of Care and the CLC that although there is value in voluntary codes of practice, such codes are not always effective in isolation and need the support of solid regulation.

Specific Submissions

Licensing Options

We support the development of a separate national licensing act for the licensing of debt collectors within Australia (Option 5). We believe that this option will benefit consumers by:

- Setting a national standard in order to be licensed as a debt collector;
- Requiring third party debt collectors to be members of EDR schemes, which will provide consumers with access to independent and objective dispute resolution schemes.

The Options Paper suggests that a separate national licensing act for the licensing of debt collectors could lead to poorer choice for consumers. However, we note that consumers are not currently provided with any choice in relation to who collects debts. Care and the CLC therefore believe that the best option is to have one clear instrument. Furthermore, if there is a choice to be made available, we believe this should be limited to businesses that operate under a licensing regime and provide access to both Internal (IDR) and External Dispute Resolution (EDR).

Currently, there is no licensing scheme in the ACT, thus consumers have limited protection from unscrupulous debt collectors. A national scheme would therefore provide particular benefits to ACT consumers.

Additionally, we oppose the option that provides for negative licensing for debt collectors. Negative licensing sets a low standard for entry into the debt collection industry. In order to provide protection for consumers there must be higher standards for entry into the industry than simply having not committed certain types of offence.

Conduct Options

For the regulation of conduct of debt collectors we support the introduction of legislative provisions (Option 4). Care and the CLC also support a prescribed industry Code of Conduct similar to the Code of Banking practice. We note, however, that codes generally do not provide for a monetary penalty for non compliance. In our opinion, any code needs to be supported by appropriate legislation. In particular, we believe that there should be compulsory standards of conduct that are legally enforceable, and which provide remedies/penalties for non-compliance. This option will benefit consumers by providing much needed clarity to both consumers and debt collectors as to their respective rights and responsibilities. Additionally, remedies/penalties for non-compliance create a real incentive for debt collectors to comply, and provide consumers with redress in circumstances where standards have been breached.

Care and the CLC have had experience of debt collectors within the ACT operating outside of the ASIC/ACCC Debt Collection Guidelines. There is currently no recourse for consumers who are detrimentally impacted by non-compliant debt collectors. Regulating conduct as well as introducing a Voluntary Code of Practice will address this current problem. It should also ensure more consistent and appropriate conduct from debt collectors.

Trust Accounting Options

We do not submit a view as to the trust accounting options as this does not relate to consumers.

Complaint Handling Options

We support the mandatory membership by debt collectors of an EDR scheme (Option 2) similar to that applicable to financial service providers who must be members of the Financial Ombudsman Scheme (FOS) or the Credit Ombudsman Service Limited (COSL). We also support regulator administered dispute resolution (Option 4). As noted earlier, this can be achieved through a national licensing model that requires all debt collectors to be members of an EDR scheme. The access to EDR is critical for the protection of consumers. In particular, EDR provides independent and objective dispute resolution. We also believe that debt collector's IDR processes will be more effective, and create a final resolution to more disputes, if there is the possibility that the dispute could be taken to EDR.

In the ACT consumers currently seek redress for issues of concern through the Office of Regulatory Services (ORS) under the ACT Fair Trading Act. It is essential that the ORS or any national regulator be provided with sufficient resources to deal with complaints in a timely and effective manner.

Administration Options

Care and the CLC prefer that either a centralized regulator (Option 2), or the state/territory fair trading offices (Option 3) handle administration. We believe, however, that there are likely to be some advantages to state/territory based services that have local area knowledge. If there is a national regulator it will be necessary for there to be staff located in each state or territory who are familiar with local issues and referral services.

As noted above, regulation is only useful if there is sufficient resourcing for training of staff and for enforcement of any applicable legislation. It is the view of Care and the CLC that it is essential for any regulator to have the capacity to deal with individual matters and not just systemic issues.

Information Standards

We support either prescribed statutory forms (Option 2), or mandatory disclosure upon request (Option 3). We believe that, when it is not the original creditor who is seeking payment of a debt, it is critical that a consumer be provided with sufficient information to identify the debt. This information is essential for consumers to be able to check whether they are actually liable to pay the claimed debt. Therefore, a provision should be included in the legislation that requires creditors to provide adequate information to debt collectors to establish liability for a debt. Care and the CLC strongly believe that debt collectors bear the responsibility for proving that a debt is legally owed, rather than the consumer having to prove that it is not owed.

Educational Requirements

We support industry determined standards of training (Option 3). If other reforms are made, that is, to have national licensing and compulsory/enforceable standards of conduct, then having industry determined standards of education/training should be sufficient. Industry will have its own motivation not to breach the legally enforceable standards so should develop the education/training accordingly. There should however be some oversight of the training by the regulator to ensure it is appropriate, sufficient and relevant.

Training should also be provided to court and tribunal staff to ensure that they:

- understand the process for debt collection through legal avenues;
- are able to assist consumers with any forms that may be required; and
- refer consumers to appropriate specialist services in the local community

Concluding Remarks

Care and the CLC support the introduction of regulation to harmonise debt collection processes and practices. We believe that any regulation should be strong and robust to allow maximum protection for vulnerable consumers. Regulation should be further strengthened by an Industry Code of Conduct.

We note further that our organisations have had recent experience with outsourced debt collectors who are operating outside of Australia. It is our view that any outsourced debt collectors should similarly be licensed and subject to any industry standards regardless of where they are located.

Thank you for the opportunity to provide this submission in response to the Options Paper: *Debt Collection Harmonisation Regulation*.