



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

4 November 2021

Fair Trading Amendment (Commercial Agents) Regulation 2021
Better Regulation Division, Regulatory Policy
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

Dear Sir/Madam,

Proposed Fair Trading Amendment (Commercial Agents) Regulation 2021

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide the attached Submission in response to the consultation on the Regulatory Impact Statement issued October 2021: *Proposed Fair Trading Amendment (Commercial Agents) Regulation 2021*.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

Alan Harries
CEO



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

***Submission to
Better Regulation Division, Regulatory Policy
Proposed Fair Trading Amendment
(Commercial Agents) Regulation 2021***

November 2021

Introduction

Australian Collectors & Debt Buyers Association (ACDBA) welcomes the opportunity to respond to the Better Regulation Division, Regulatory Policy consultation on the Regulatory Impact Statement issued October 2021: *Proposed Fair Trading Amendment (Commercial Agents) Regulation 2021*.

Established in 2009 for the benefit of companies who collect, buy and/or sell debt – ACDBA's members (refer Appendix 1) represent the majority of the collection market in Australia. Members based in NSW collectively have 1,100 full time equivalent employees tasked to debt collection activities not involving face to face contact with consumers.

The core business of our members within the financial services industry is in the credit impaired consumer segment, whether as collectors or debt purchasers, working with consumers who for various reasons, have found themselves in default of their credit obligations.

Debt purchasing

Accounts assigned to debt purchasers typically involve debts where an acceleration clause in the financial agreement has been triggered by the customer's default in making repayments.

Many with accelerated debts are in hardship giving rise to complex, contested and unresolved issues. Debt purchasers are specialists in dealing with and managing hardship as they almost exclusively interact with customers in some form of financial difficulty.

An expanded explanation of how debt purchasing operates in Australia is included as Appendix 2.

Response

In this submission ACDBA refrains from providing individual responses to the 15 Consultation questions on which the department seeks stakeholder comment in relation to the draft Regulation, and instead responds as follows:

The following material was reviewed and considered in relation to the Consultation:

- Regulatory Impact Statement;
- *Fair Trading Amendment (Commercial Agents) Act 2016*; and
- Draft *Fair Trading Amendment (Commercial Agents) Regulation*.

ACDBA has also reviewed and considered the detailed submission to the Consultation made by the Institute of Mercantile Agents dated 3 November 2021 and advises it fully supports the perspectives outlined by the Institute of Mercantile Agents.

Appendix 1 - Members of Australian Collectors & Debt Buyers Association

- Axess Australia Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd t/as reminda
- Charter Mercantile Pty Ltd
- CollectAU Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Lyndon Peak Pty Ltd t/as Access Mercantile Services
- PF Australia Pty Ltd
- Pioneer Credit Limited (ASX: PNC)
- PRA Australia Pty Ltd
- Prushka Fast Debt Recovery Pty Ltd
- Recoveries Corporation Holdings Pty Ltd
- Shield Mercantile Pty Ltd
- Standard8 Advisory Pty Ltd
- Strategic Collections Pty Ltd

Appendix 2 - Debt Purchasing explained

Debt sale contracts exhibit the features of outsourced service provision rather than asset divestment - the contracts contain substantial ongoing conduct obligations and restrictions imposed on the purchaser, which are supported by warranties, indemnities and other potential penalties. The conduct obligations deal with matters such as ongoing compliance with laws, codes, guidelines, data security, principles of fairness and policy directives of the seller.

These contractual requirements are supported by ongoing reporting obligations for matters including breaches, complaints and the identification of customers in sensitive circumstances. There are provisions for extensive auditing, on-site visits and regular review meetings to share emerging issues. Sellers retain substantial discretion to recall individual customer accounts at any time.

The contractual elements create an outsourcing relationship granting the seller substantial control over the ongoing conduct of the purchaser and the experience of individual consumers.

It is appropriate to note ASIC as the regulator for the financial services industry provides guidance in respect to conduct relating to a debt¹:

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.

Accounts assigned to debt purchasers by original credit providers typically involve debts where an acceleration clause in the financial agreement has been triggered by the consumer's default in making repayments. Once a debt has been accelerated, the amount owing is immediately due and payable.

Many, if not most consumers with accelerated debts are likely to be in hardship giving rise to complex, contested and unresolved issues.

Debt purchasers are specialists in dealing with and managing hardship as they almost exclusively interact with customers in some form of financial difficulty.

Debt purchasers do not establish separate hardship teams and do not need to implement protocols and systems to identify hardship. Rather, they proceed on the basis that every customer is in hardship. This means that every customer receives an empathetic and understanding experience designed to reach mutual agreement on a sustainable repayment arrangement.

The debt purchase business model includes two key features being:

- a. The model is uniquely suited to the promotion of affordable and flexible long-term payment arrangements which most effectively respond to individual customer circumstances
- b. Debt purchasing involves the assignment of permanent tenure to defaulted loans at prices which represent a substantial discount to the face value outstanding

The benefit of these two features is allowing debt purchasers to agree to longer-term payment arrangements with lower and more affordable repayments for the customer in hardship and to take a patient approach to understanding and accommodating individual customer circumstances.

¹ Equifax Default Information Guide version 23.0 - February 2019

Each year ACDBA members and other industry firms participate in a data survey to provide industry wide demographics. Reviewing the data survey for FY2021 reveals there were 2.98 million accounts with a total face value of \$13.9 billion under collection that had been purchased from originating credit providers.

These aggregated figures reveal a low average value per account of only \$4,664.

Debt purchasers handle a range of debt values in their portfolios from lesser amounts in respect to telecommunication debts through to larger amounts for higher value credit card and other banking product debts.

Survey respondents in FY2021, reported for both debt purchase and contingent collections collecting \$1.55 billion of defaulted consumer credit obligations, restructuring \$3.06 billion into sustainable repayment arrangements together with a \$1.16 billion in hardship arrangements and waiving a further \$54.7 million owed by vulnerable customers in financial hardship.