

Debt Collection Small Business



How do I find out more?

To find out more, contact the ACCC infocentre by:

Phone: 1300 302 502

Email: infocentre@acc.gov.au
or visit the ACCC website at www.accc.gov.au.

Offering credit terms to your customers can be a great way to increase sales. However, this also opens your business to the risk of consumers not meeting their debts on time.

Debt collection is an important part of any business which trades on credit terms. Consumers who are legally bound to pay or repay money are expected to do so, unless they have a valid reason not to, such as bankruptcy or statute barring of the debt.

Your business is entitled to take reasonable steps to contact those owing you to make arrangements for repayment of the debt. The most common solution is to engage the services of a collection agency to recover the debt on your behalf.

The Trade Practices Act (the TPA) places limits on the behaviour of collectors to protect consumers from misleading, unfair or intimidating behaviour. Both ASIC and the ACCC have consumer protection roles in relation to debt collection.

In addition to the general prohibitions against misleading and deceptive

conduct, the Act specifically prohibits three main types of behaviour in relation to collecting debts; physical force, undue harassment and coercion.

The maximum penalty for breaking these rules is \$1.1 million.

What is undue harassment and coercion?

All businesses, including debt collection agencies, are forbidden from using physical force, undue harassment or coercion in connection with obtaining payment for goods or services.

Undue harassment is behaviour designed to intimidate or wear down consumers, rather than simply inform them of the existence of the debt and their obligation to repay it. Repeated contact is more likely to be viewed as undue harassment than one-off demands.

Coercion is compelling someone to do something against their will, either through force or the threat of force.

Some examples of conduct that may be considered undue harassment or coercion are:

- using, or threatening to use, physical force
- making unreasonably frequent calls, especially if late at night
- disclosing or threatening to disclose information to others, such as family members, employers or

government agencies

- using abusive or threatening language.

So how can I recover money owed to me?

Consumers owing you money should be treated with courtesy and respect – there is no need for a business to resort to bullying and misrepresentation.

Contacting the consumer

Where a customer owes your business money, the most appropriate way to make initial contact is via the telephone. You should be prepared to provide details to the consumer of the debt, including the amount owing, and how/when it was incurred. You should also ensure that you do not mislead the consumer about the amount owing or consequences of non-payment.

There may be particular rules in your State or Territory regarding the hours, places or frequency with which you may contact those owing money – your state Fair Trading agency can provide further information.

As a general rule you should try to call at a reasonable time ie not too early in the morning or too late at night.

You should be careful not to contact them at a place where they have requested not to be called, such as their workplace.

You can make reasonable efforts to make contact, but you should not make more than three calls a week—especially where you have successfully made contact.

Visiting in person

Visiting those owing you money in person should be a last resort. It is inherently risky, as people are more likely to feel threatened or intimidated in person. Therefore, it is essential that you take precautions to avoid this occurring.

You should also make your visit as brief as possible, and not remain in the vicinity for an extended length of time to try to intimidate or embarrass them, or to make them feel that they are being watched. You should immediately leave if requested to do so.

As a general rule, you should not visit a debtor in person more than once a week.

Remember, these rules apply to *any* company pursuing a debt – including where a company is requesting payment from your business.

Did you know?

The ACCC publication '*Debt Collection and the Trade Practices Act*' is available free of charge from the ACCC website at www.accc.gov.au, or by calling the ACCC Infocentre.

Following public consultation, a revised version shall be launched in cooperation with ASIC in mid 2005.