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Dear collector,

### **Complying with the Australian Consumer Law when collecting debts**

I am writing to share some key messages for debt collectors based on observations from the Australian Competition and Consumer Commission's (ACCC) recent industry engagement.

The ACCC and Australian Securities and Investments Commission (ASIC) enforce Commonwealth consumer protection laws, including laws relevant to debt collection. Working with ASIC, the ACCC has recently updated the [Debt collection guideline for collectors and creditors](#) (the Guideline).

The ACCC regularly receives reports from consumers about concerning debt collection practices that we use to inform our compliance and enforcement activities.

The ACCC has conducted a **debt collection industry compliance campaign** throughout 2021. We have engaged with a broad range of debt collection firms and other businesses to:

- raise debt collection issues reported to the ACCC, including issues affecting vulnerable consumers, and
- proactively remind collectors and creditors of their obligations under the Australian Consumer Law (ACL) and outline best practice, including as set out in the Guideline.

### **Contacting debtors**

We note the section in the Guideline about contacting debtors. All contact should be for a reasonable purpose and should only occur to the extent necessary.

Frequent attempted contact may amount to undue harassment. Collectors should not be repeatedly calling, texting, or otherwise contacting a debtor in quick succession, even if the debtor does not answer the initial call.

### **Providing information and documents to debtors**

The ACCC reminds collectors that, in certain circumstances, failure to provide information could constitute misleading or deceptive conduct or unconscionable conduct. You should provide copies of contracts and related documents without unreasonable delay if these are requested by a debtor or on behalf of a debtor.

## **Notifying debtors of debt assignments and default listings**

Many debtors have reported being contacted by debt collectors without receiving prior bills or correspondence from the business which is allegedly owed the debt. Several debtors have also reported genuine debt collectors to the ACCC in the belief that they are being scammed, which may suggest that:

- businesses may not be adequately notifying debtors how and when their debts will be referred to external debt collectors
- collectors may not be adequately notifying debtors why they are collecting the debt.

When making initial contact with the debtor, good practice is to provide basic information about the debt, including the name of the creditor and any assignee of the debt, details of the account and the amount claimed. Clearly explaining why a party other than the original creditor is involved in the collection of a debt is important to avoid debtor confusion and to encourage a cooperative response.

To further aid debtors' understanding, we recommend that creditors and assignors should give advance notice in plain English to the debtor before a debt is referred or assigned to an external collector.

We also urge you to proactively identify debtors' correct contact details before sending notices of assignment, default listings and other notifications.

### **If liability is disputed**

Good practice is to treat a disputed debt as a complaint. We recommend that you acknowledge each complaint and provide a written outcome to the alleged debtor. We also recommend that while debts are subject to a dispute of any kind, you should cease collection activity.

The ACCC also encourages you to review your dispute resolution policies to ensure these are consistent with the Guideline. We urge you to provide clear notice of these dispute resolution options to debtors.

### **Hardship policies and processes**

We urge you to act respectfully towards debtors and to have clear, effective and fair policies and procedures for identifying and dealing with vulnerable debtors. The ACCC's new publication [Consumer vulnerability: A business guide to the Australian Consumer Law](#) has further information on engaging with vulnerable consumers.

If a debtor discloses that they are experiencing circumstances such as family violence, including economic abuse, it may not be reasonable to continue to contact them.

### **Conduct towards family members and other third parties**

Any contact with a third party must always be for a reasonable purpose and should only occur to the extent necessary.

You must not try to pressure a debtor by misleading, harassing, threatening or putting pressure on a debtor's spouse or partner, a member of a debtor's family (especially a child) or other third parties such as authorised representatives. You may breach the law if you put pressure on the debtor indirectly by involving the third party, or if through contact with the third party you embarrass or distress the debtor.

Any communication with third parties, including members of a debtor's family, must also be consistent with your privacy obligations to the debtor and the third party.

## **Representations about the consequences of non-payment**

You are entitled to accurately explain the consequences of non-payment of a debt, but you must not misrepresent those consequences. Threatening legal action where the start of proceedings is not possible, not intended, or not under consideration, or you do not have instructions to start proceedings is likely to raise concerns under the ACL

## **Penalties for non-compliance with the Australian Consumer Law**

The ACCC will continue to monitor reports received about debt collection and will not hesitate to take enforcement action where we identify continued concerning practices.

The ACCC's most recent enforcement actions against debt collection businesses include our cases against [ACM Group](#) and [Panthera Finance](#).

Corporations which contravene provisions of the ACL prohibiting harassment or coercion, false or misleading representations or unconscionable conduct can face significant penalties (up to the greater of \$10 million, three times the benefit received, or where the benefit cannot be calculated, 10% of annual turnover in the preceding 12 months).

Thank you for taking the time to read this letter. For further information, please read the ACCC/ASIC [Debt collection guideline](#) for a comprehensive guide to best-practice debt collection.

Yours sincerely



Delia Rickard  
Deputy Chair  
Australian Competition and Consumer Commission