



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

18 May 2017

ASIC Enforcement Review
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: ASICenforcementreview@treasury.gov.au

Dear Sir / Madam

**ASIC Enforcement Review: Position and Consultation Paper 1
Self-reporting of contraventions by financial services and credit licensees**

With reference to *Position and Consultation Paper 1 Self-reporting of contraventions by financial services and credit licensees* (the Review Paper) the Australian Collectors & Debt Buyers Association thanks you for the extension of time to provide its comments in response to a number of matters raised by the ASIC Enforcement Review Taskforce (the Taskforce).

About ACDBA

The Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009. Membership is voluntary and open to all debt collectors and debt buyers. Our members¹ represent the majority of the collection market in Australia.

The ACDBA supports considered, harmonised and fair regulation to ensure the activities of Australian Credit Licensees are appropriately managed to community standards.

¹ Refer Annexure A

Response to Review Paper

There are very fundamental and essential differences between the areas of endeavour covered by Australian Financial Services Licensees (AFSL) and Australian Credit Licensees (ACL) respectively:

- The current AFSL regime is about protecting personal wealth of individuals in relation to investment strategies and the advice that they receive - the focus being about preventing harm to the wealth of the consumer; and
- The ACL regime regulates credit lending i.e. the provision of an institution's wealth, on terms to individuals.

The ACDBA acknowledges the well-publicised situations within the AFSL sector which warrant further improvements to the breach reporting obligations for the AFSL regime, however respectfully we submit such need for improvements is not evident for the ACL regime.

Applying a mechanism of self-reporting from the AFSL regime to the ACL regime predicated on any concept of similarity, is not a fair comparison of "like with like". Credit licensees do not provide advice (financial or otherwise) to any party.

Our intention in this response is to primarily focus upon the ACL sector, being the area of endeavour for ACDBA members, however, we note our general support for the Taskforce's recommendations in relation to changing the self-reporting criteria for the AFSL sector so as to accommodate more timely advice to ASIC about a breach. Our support is on the basis, such recommendations should assist ASIC to become aware of contraventions and hopefully to act in a timely way to assist in preventing the activities of fraudsters and others, who knowingly engage in ways which are less than compliant and ultimately to the financial detriment of consumers.

At a very superficial level, the proposed alignment of the two regimes (AFSL and ACL) for the purpose of self-reporting contraventions as suggested in the Review Paper may have some limited logic, but a more sustainable and robust policy position is that the ACL regime does not need to be as stringent as the AFSL regime for reasons, including but not limited to:

1. Importantly, credit licensees do not deal with the public's money;
2. Credit licensees do not provide advice (financial or otherwise) to the public;
3. The ACL regime already has adequate compliance systems and obligations;
4. Credit licensees are subject to existing annual compliance reporting to ASIC; and
5. Credit licensees have effective oversight by their respective External Dispute Resolution Schemes in relation to complaints arising from breaches and such oversight which has proven to be robust and effective should also be sufficient for the actual risks associated with the sector.

More specifically, credit licensees are subject to significant, ongoing and effective surveillance by way of the following checks and balances:

- Each ACL is required to meet obligations detailed in various ASIC Regulatory Guides, including:
 - RG 96 Debt collection guideline: For collectors and creditors
 - RG 165 Licensing: Internal and external dispute resolution
 - RG 204 Applying for and varying a credit licence
 - RG 205 Credit licensing: General conduct obligations
 - RG 206 Credit licensing: Competence and training
- An Annual Compliance Certificate for each ACL is required to be lodged with and reviewed by ASIC
- Requirements pursuant to the National Consumer Credit Protection Act 2009 for credit licensees to deal with disputes, complaints and hardship matters
- Complaints from consumers in relation to alleged contraventions by the ACL in accordance with RG 165 are handled by the ACL's Internal Dispute Resolution procedures and in the absence of resolution may be elevated to the ACL's ASIC approved External Dispute Resolution Scheme, being either the Credit & Investments Ombudsman (CIO) or the Financial Ombudsman Service (FOS) for appropriate resolution, with the scheme's determination being binding upon the ACL
- Both ASIC approved External Dispute Resolution Schemes have the powers to review disputes/complaints; to make findings and binding determinations upon the ACL and have obligations to refer and report matters of individual or systemic concern to ASIC
- The sector's primary regulator, ASIC is able to receive and investigate complaints about credit licensees directly
- The other national regulator, ACCC is similarly able to receive and investigate consumer complaints about credit licensees directly
- Credit licensees which are members of ACDBA are subscribers to and bound by the requirements of the ACDBA Code of Practice

It is appropriate to note that the ACL regime already incorporates a Responsible Lending Criteria which each ACL who provides credit must follow before credit is provided to the consumer – effectively the responsible lending criteria already regulates the provision of credit in Australia.

The Review Paper does not define what exactly ASIC now seeks to regulate if a self-reporting system is introduced for credit licensees. We submit careful consideration would need to be taken as to what areas were reportable and given the wide variety of activities undertaken by credit licensees, how they engage in credit activities would also need to be considered.

The Review Paper suggests the self-reporting regime for credit licensees should be limited to significant or material breaches under section 912D of the Corporations Act - this in and of itself will be a subjective question for each credit licensee and with respect is likely only to lead to confusion on when to report.

Specifically, having regard to section 912D, what conduct or issues is it proposed that credit licensees who are engaged in debt buying and collections, which could or should be regarded as “Significant Contraventions” and therefore become reportable? Section 912D as presently in place is extremely subjective and presents a grey area from a debt industry perspective.

It is appropriate to point out that credit licensees engaged only in debt buying and debt collection activities are involved in the post “responsible lending criteria” phase of credit transactions.

If the principal purpose of the proposed self-reporting system for credit licensees is to provide for the notification of breaches relating to responsible lending criteria then there is a compelling case that credit licensees involved in debt buying and/or debt collection activities only and not in any other credit function should be exempted from any requirement to participate in the proposed self-reporting obligations.

In responding to the two specific questions in the Review Paper relating to a proposed self-reporting regime for credit licensees, we advise:

Q6.1 Should the self-reporting regime for credit licensees and AFS licensees be aligned?

No. We respectfully submit any alignment of the self-reporting regime would not work primarily due to the mismatch of purpose for each regime - the situations and risks from the AFSL and ACL regimes are different and not of the same scale.

The AFSL regime’s purpose is to protect individual wealth in relation to investment strategies and advice received. Whereas the ACL regime’s purpose is to regulate the lawful provision of credit to consumers (National Consumer Credit Protection Act). Accordingly, the reporting requirements and timing under each regime would be different and would be for different purposes.

Potentially if a self-reporting regime for credit licensees was introduced, then much might be gained from the AFSL reporting regime in a similar way to the situation of learning taken from Chapters 7 & 8 of the Corporations Act and the subsequent enacted National Consumer Credit Protection Act, however, serious consideration and modifications would need to be taken as to what activities require reporting and when, given the different purposes under each Act.

Q6.2 What will be the impact on the industry?

It is somewhat too premature to ask this question - the inclusion of this question highlights an apparent lack of thought and consideration by the Taskforce before including the recommendation to create a self-reporting regime for credit licensees. This apparent lack of rigour is manifestly evidenced by the amount of space the recommendation and any justification for the imposition of an additional compliance burden upon the ACL sectors is given within the Review Paper.

The Review Paper notes the majority of credit licensees are individuals but otherwise there is a lack of clarity around proposed additional compliance requirements, which are not articulated in any meaningful way, especially when considering the differing purposes of each Act underpinning the respective regimes, making it very difficult to determine the impact on the industry at this stage.

ACDBA will be in a position to comment upon the likely impact to the industry, once these matters are more fully articulated so as to allow a better understanding of what is actually being proposed.

Should any additional information be required in respect to any aspect of this submission, please contact the writer.

Yours sincerely,

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

A handwritten signature in black ink, appearing to be 'Alan Harries', with a stylized flourish extending to the right.

Alan Harries

CEO

Email: akh@acdba.com

Annexure A:

The members of Australian Collectors & Debt Buyers Association are:

- ACM Group Ltd
- Australian Receivables Ltd
- Axess Australia Pty Ltd
- Baycorp (Aust) Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- Collection House Limited
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited
- Credit Four Pty Ltd
- Dun & Bradstreet (Australia) Pty Ltd
- National Credit Management Limited
- Panthera Finance Pty Ltd
- Pioneer Credit Limited
- Shield Mercantile Pty Ltd