



RESEARCH INTO THE AUSTRALIAN DEBT COLLECTION INDUSTRY

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AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION

MAY 2015

Contents

Executive Summary	3
Market Overview	3
Definition of Debt Collection	4
Key Findings	5
Objectives and Methodology	8
Background	8
Project Objectives	9
Approach	10
Summary of Perspectives	12
Advocates	12
Industry	13
Regulators	14
Retailers	16
Market Analysis	17
Snapshot	17
Industry Structure	18
Industry Trends	19
Licensing and Regulatory Framework	23
ACCC/ASIC Debt Collection Guideline	29
Australian Credit Licence	30
Consumer Protection	31
Operating Models	36
Approach	36
Operating Structures	43
Remuneration and Incentives	43
Compliance	44
Hardship	45
Complaint Management	48
Complaint Analysis	51
Problematic Markets, Structures and Best Practice Observations	59
Additional Fees	59
Misleading Threats	61
Continued Contact	62
Debt Purchase and Contingent Collections	64
Financial Services Sector	64
Energy Sector	66
Telecommunications Sector	69
Education Sector	71
Healthcare Sector	73
Government Sector	74
Credit Repair	76
The Role of External Dispute Resolution (EDR) Schemes	78
Industry Divergence	80
Licensing and Regulation Environment	81
Appendix A: List of Participating Organisations	86

EXECUTIVE SUMMARY

Debt collection is inevitably an emotive issue. Consumers who are contacted by debt collectors can suffer personal stress and real or perceived reputational damage. Conversely, businesses are mindful of the impact of unrecovered monies on their continued solvency.

While the debt collection industry has seen a notable increase in standards in recent years, a number of problematic practices remain. The Australian Competition and Consumer Commission (ACCC) has signalled its intention to take appropriate action, including enforcement, against debt collectors who breach the law.

This report examines the debt collection industry in Australia on behalf of the ACCC and its Consumer Consultative Committee (CCC). It aims to provide greater understanding of the industry and to identify structural issues or operational practices that may lead to problematic behaviours within the sector. This information will enable the ACCC to better address industry issues and respond to emerging trends in an effective way.

The report does not seek to identify specific instances of non-compliant debt collection practices, or to discuss in detail the experiences of consumers when dealing with debt collectors. Regulators and advocates who received consumer complaints are aware of these issues and recent studies provide further information.¹

While the report refers to the collection of credit regulated debt for comparison purposes, it was not specifically included in the scope of the research. However, many of the issues discussed are also relevant to this sector, which is regulated by the Australian Securities and Investments Commission (ASIC).

Market Overview

The debt collection industry in Australia is relatively competitive, with over 500 businesses offering some form of debt collection service. While the industry is dominated by a few larger players, the sector is mainly comprised of small businesses, with 63% generating less than \$200,000 in revenue and 95% employing less than twenty people.²

Such a divergence has created an interesting competitive dynamic. The major users of debt collection services tend to favour the larger debt collection businesses that have the necessary scale and sophistication to meet their

¹ <http://consumeraction.org.au/wp-content/uploads/2012/07/Pursuit-of-Impossible-July-2012-2.pdf>

² IBISWorld (Kelly, A), Debt collection in Australia: Industry Report N7293a, June 2014

requirements. This means smaller firms are more likely to specialise in niche markets where demonstrated industry knowledge can provide a competitive advantage.

Developments in technology, new customer segments and attitudes to compliance have driven significant change in the industry over the last five years. Technology has created economies of scale, which has seen the majority of collection activity shift to call centre based operations allowing for consolidation within the sector.³ Technology has also increased internal oversight and compliance as digitisation allows for call recording and improved record keeping.

The compliance environment is complex. Debt collectors are required to comply with a number of state and federal legislative and regulatory instruments.

Banks, telecommunications providers and energy companies have been long-term users of debt collection services. However, over recent years the industry has seen clients emerge in new sectors, including government, health care and education.

Definition of Debt Collection

For the purposes of the project, Anteris Consulting has adopted the definition of debt collection provided by the ACCC:

A debt collector is a person who collects debts on behalf of a business.

This could be:

- *a creditor collecting a debt themselves (this includes 'assignees' – people or businesses who have been sold or 'assigned' a debt by the original creditor)*
- *someone collecting on behalf of the creditor (for example, an independent collection agency).⁴*

This definition covers a broad range of businesses who manage their own debts as well as commercial third parties, including contingent collectors, debt purchasers, legal firms and field agents.

³ Ibid

⁴ <https://www.accc.gov.au/consumers/debt-debt-collection/dealing-with-debt-collectors>

Key Findings

- **Technology and scale have improved compliance, but there are still challenges for both large and small businesses**
 - › Large collections businesses now have automated systems and procedures to ensure compliance with provisions relating to the timing, frequency and appropriateness of contacts. However, this results in a substantial number of contacts to consumers, which is the underlying driver of complaints.
 - › Small businesses may not be able to implement automated systems, and are therefore heavily reliant on training, support and a compliance culture to ensure that they are meeting their obligations.

- **Issues with debt collection can vary by sector; different debt drives different behaviours and outcomes**
 - › There is a clear distinction between issues arising in relation to credit regulated debt and non-credit regulated debt, such as the energy and telecommunications sectors. This distinction occurs because of the nature and value of the respective debts.
 - › The identification and adoption of best practice approaches in the debt collection industry requires a comprehensive understanding of those industries that are referring or selling debt.
 - › Debt collectors state a preference for collecting debt from those businesses that have rigorous processes in place to ensure debt quality and hardship issues are appropriately managed prior to a debt being referred or sold.

- **Rising costs and the nature of supply have created a particular set of challenges for the energy sector**
 - › Consumer advocates have raised concerns about debt collection practices within the energy sector. Billing issues, management of hardship, disconnections and the referral of debt to multiple debt collectors were cited as areas of concern.
 - › The debt collection industry believes that a significant portion of complaints are driven by billing issues, disputes, or a failure to identify hardship, rather than debt collection conduct.
 - › Energy retailers acknowledge the issues. There was general agreement that the sector is highly transactional in nature, which creates some unique challenges within the sector.

- **Debt collection approaches that impose additional costs can result in detriment for consumers in financial distress**
 - › Consumer advocates report that it is common for some debt collectors or solicitors to impose additional fees and charges on outstanding debts. From a consumer perspective, such fees can exacerbate any existing incapacity to pay.
 - › Debt collection businesses note there are standard terms and conditions that allow for recovery of costs associated with debt collection. However, consumer advocates suggest that these terms are not commonly provided and if they are, they either do not provide for recovery of costs or the relevant term is arguably unfair.

- **Increased regulatory oversight has led to an improvement in debt collection behaviour**
 - › Regulatory measures such as the Australian Consumer Law (ACL), the Australian Credit Licence, external dispute resolution (EDR) schemes and the ACCC/ASIC Debt Collection Guideline for Collectors and Creditors have resulted in improved behaviours within the sector.
 - › Increased regulation and oversight, and the associated compliance costs, have contributed to industry consolidation. There is a noticeable difference between the compliance environments of larger and smaller collection businesses. This may indicate that larger businesses have been more effective in implementing compliance frameworks and promoting a compliance culture.

- **Despite variations in state and territory licensing regimes, the key obligations of debt collectors when dealing with consumers are made clear by the ACCC/ASIC Debt Collection Guideline**
 - › Debt collectors are currently required to respond to a range of national and state based laws, regulations and licensing requirements. This has created confusion, or additional administrative burden, for some businesses in the sector.
 - › The ACCC/ASIC Debt Collection Guideline is the regulators' interpretation of the key consumer protection legislation. It represents best practice for the industry, and makes compliance obligations clear.

- **Non-compliant debt collection practices result in significant detriment to vulnerable and disadvantaged consumers. Regulators are willing to take appropriate action in such cases**
 - › Regulators and consumer advocates generally acknowledge that complaints are relatively low as a proportion of total debts referred for collection.
 - › However, complaints regarding debt collection are highly emotive and can lead to both financial and psychological stress for consumers. Consumer advocates also point to research that suggests debt collection complaints are grossly under-reported.
 - › Debt collection often affects consumers who are experiencing hardship in various forms. Non-compliant debt collection activity can be particularly harmful to vulnerable or disadvantaged consumers. The protection of vulnerable and disadvantaged consumers is an ongoing priority for the ACCC.

- **Credit repair businesses often increase costs for consumers with debt problems**
 - › While credit repair services are not part of the debt collection industry, there is a consensus between industry, regulators and consumer advocates that these businesses can add unnecessary costs for consumers who have an outstanding debt.
 - › Stakeholders noted that credit repair agencies charge consumers large fees for support that is freely available to them from credit reporting agencies, industry ombudsmen, the Office of the Privacy Commissioner and financial counsellors.

OBJECTIVES AND METHODOLOGY

Background

Anteris Consulting conducted the research for the ACCC and its Consumer Consultative Committee (CCC). The ACCC is an independent statutory authority that administers and enforces the *Competition and Consumer Act 2010* (CCA) and the Australian Consumer Law (ACL), which is Schedule 2 of the CCA. The CCC is a stakeholder forum that provides comments and insights that relate to trends that may affect particular groups of consumers.

The ACCC's four key goals are to:

- maintain and promote competition and remedy market failure
- protect the interests and safety of consumers and support fair trading in markets
- promote the economically efficient operation of, use of, and investment in monopoly infrastructure
- increase engagement with the broad range of groups affected by the ACCC's work.

Given its broad remit, the ACCC maintains a constant watch on markets and monitors emerging issues as they relate to consumer protection. One way this occurs is through the CCC, a forum that meets four times per year and provides comments and insights related to trends that may affect particular groups of consumers.

Since 2002, the ACCC and ASIC have been jointly responsible for administering consumer protection legislation in relation to the debt collection industry. The consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and the ACL largely mirror each other. ASIC administers the ASIC Act, while the ACL is jointly administered by the state and territory consumer protection agencies and, at the federal level, by the ACCC.

Together, these two agencies produce the ACCC/ASIC Debt Collection Guideline for Collectors and Creditors.⁵ This Guideline seeks to detail the rights and obligations of debt collectors and creditors when pursuing outstanding monies.

There is also a variety of state licensing laws in relation to debt collection. These requirements can appear duplicative or inconsistent, and may create confusion for creditors and debt collectors.

⁵ <https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors>

Debt collection practices are an ongoing concern cited by the CCC. Accordingly, the ACCC determined that a more thorough examination of the Australian debt recovery market was required, and in November 2014, Anteris Consulting was engaged to undertake research on its behalf.

Project Objectives

The primary objective of this project was to undertake research and analysis of the debt collection industry, in order to understand its structure and operation. Specifically, the report aims to identify the extent to which broader structural issues or operational practices may lead to problematic behaviours within the industry. This information will enable the ACCC to better identify industry issues and respond to emerging trends.

More detailed objectives include discussion and analysis of the following:

- **Market overview**
The size and scale of the debt collection industry, key sectors for debt collection, and an analysis of the available data relating to the industry.
- **Industry structure**
A breakdown of debt purchase versus contingent collection and other debt collection models, operating structures deployed by market participants and industry views of their effectiveness (performance, cost and compliance).
- **Compliance**
The level of awareness and training relating to the relevant legislation and the ACCC/ASIC Debt Collection Guideline for Collectors and Creditors, including analysis by business sector, a review of compliance and hardship programs adopted by creditors and industry, and an outline of problematic behaviours.
- **Industry behaviours**
The impact of different operating structures on behaviour, canvassing incentives, use of profiling, interaction with retailers/traders and how debt collection lawyers are used within the recovery process.
- **Best practice**
Which models perform best, both in terms of compliance with the ACL and outcomes for consumers, how different sectors influence debt collection practices, the degree to which industry can be more proactive, and how the ACCC might support broader compliance activity.

Approach

Anteris Consulting has used a combination of research methods in preparing this report. These include:

- Literature review

A review of relevant domestic and international written material. Much of this information was sourced from various stakeholder submissions made in response to recent government inquiries.

- Interviews

Interviews were conducted with relevant personnel from organisations representing industry, consumer advocates, ACL regulators, industry ombudsmen, traders/retailers/credit providers and financial counsellors.

Interviews were generally conducted at CEO or Executive Management level. The process allowed for a deeper examination of current issues or trends relating to debt collection and different market sectors. A table outlining participation by sector has been included on the following page.

- Surveys

An online survey tool was developed and used to capture information relating to the debt collection industry, including demographics, collections approaches, engagement with retailers, market trends, compliance environments, complaints, and best practices.

Surveys were customised for specific sectors, which included telecommunications, energy, healthcare, and education. Participation was sought from retailers, debt recovery businesses (and legal firms), mercantile agents (field agents) and financial counsellors.

Data from the survey is used to support many of the quantitative findings contained within this report. A table detailing survey responses by sector and business size has been included on the following page. The majority of larger debt recovery businesses participated in the survey or interview process. It is estimated that survey data reflects the views of around 80% of industry by activity.

Participation by Sector

88 participants responded to surveys, representing the views of 82 individual organisations. 25 formal interviews were conducted between November 2014 and February 2015, with a number of subsequent follow up discussions. Some organisations participated in both the survey and interview process, while a small number contributed data only.

Combined, the survey and interview process canvassed the views of 93 different organisations. The tables below provide a breakdown of sector representation and include an analysis by size of business for the debt collection industry. A full list of participating organisations has been included at Appendix A.

Sector (unique organisations)	Participation #	Participation %
Debt Collection Industry	40	43%
Retailers / Traders / Credit Providers	14	15%
Financial Counsellors	21	23%
Consumer Advocates	2	2%
Regulators	13	14%
Affiliates ⁶	3	3%
Total	93	100%

Responses by Business size (employees) for debt collection businesses/law firms	Participation #	Participation %
< 10	15	37.5%
11 to 25	6	15.0%
26 to 50	7	17.5%
51 to 100	2	5.0%
101 to 250	3	7.5%
251 to 500	3	7.5%
> 500	4	10.0%
Total	40	100.0%

⁶ Affiliates include industry bodies and suppliers to the debt collection industry

SUMMARY OF PERSPECTIVES

This section provides a brief overview of the views of key stakeholder groups based on submissions to previous inquiries, reviews and one-on-one interviews conducted for the research. The views outlined in this section are explored in further detail in later parts of the report.

Advocates

Many consumer advocates have valuable experience dealing with debt collection and related issues. These include consumer focused community legal centres, financial counsellors and other support services. The views of consumer advocates towards the sector are wide ranging. This is reflective of the type of work they undertake, the industries they primarily deal with and the types of consumers they work with. However, some views regarding the industry are common to most, if not all, consumer advocates.

Complaints

Debt collection issues are responsible for a sizeable proportion of all complaints brought to the attention of consumer support services. Many of the complaints relate to excessive, harassing and coercive behaviour. Advocates also note that many complaints arise from the use of legal services that may unnecessarily escalate costs and consumer harm associated with debt collection. Government fines and other debts make up a sizeable number of issues brought to the attention of advocates.

One-on-one interviews revealed concern about the use of multiple collections businesses to pursue outstanding debt. This is known as a tiered collection strategy, where the same debt may be referred to two or three different debt collection businesses. Contact from multiple collectors can add to consumer confusion, concern and stress. There is a desire for the ultimate owner of the debt to ensure a more transparent and streamlined process when dealing with debtors. Advocates also noted growing incidents specifically related to outstanding debt to energy retailers.

Consumer harm

Advocates believe that education is necessary to increase consumer understanding of their rights and responsibilities. There is agreement that lower-socio economic groups in the community suffer higher levels of stress from the collections process and have limited resources to access legal assistance, while creditors are increasingly using legal services to escalate disputes. Advocates also note that debt collection should be considered as part of broader public policy debates about welfare, with the outcome of many consumer experiences likely to result in increased demand for government support services.

Regulation

Consumer advocates argue that greater emphasis on regulation and oversight must be part of the response to excessive, harassing and coercive behaviour by the debt collection industry. There is universal agreement that external dispute resolution processes are a critical avenue through which consumers can pursue their rights. There is some recognition that the current regulatory structure is unwieldy and may require streamlining and harmonisation.

Consumer advocates note that the ACCC/ASIC Debt Collection Guideline offers best practice processes for debt management but that greater oversight and enforcement of the guideline is necessary.

There was recognition, particularly during one-on-one discussions, that some debt collection businesses have made considerable progress over recent years. This includes better management of collections strategies in cases involving hardship and increased compliance with laws, regulations and guidelines.

Industry

The debt collection industry, including associations and collection businesses, views the industry as one that makes a significant economic contribution to the country and plays an important role in the management of cash flow for Australian businesses. It points out that the industry encompasses a wide range of activities and is made up of businesses of various sizes.

The debt collection industry recognises that there is considerable interest and debate regarding the industry. It is concerned that much of the public perception relies upon outdated stereotypes, and has a desire to improve the reputation of the industry. In general, the industry raised three key points:

- the total number of incidents/complaints is statistically low when compared to the level of interaction with consumers
- the industry is subjected to a high level of regulation and oversight and the aim should be to reduce, not increase regulation
- dispute resolution processes should not be utilised by consumers to avoid their legal obligations.

Complaint levels

While noting that the collection process can be emotional and challenging for debtors, the industry argues that total complaints are low. The Australian Collectors and Debt Buyers Association (ACDBA) regularly undertakes surveys of its members, and cites a 2014 data study as evidence of this. It notes the following:

- alleged incidents occur in only 0.0134% of contacts made by the industry

- 75.7% of all incidents raised by debtors in FY14 were resolved within appropriate timeframes, with 64.4% found to have no basis or insufficient detail to investigate, or were ultimately withdrawn by the complainant
- the data survey notes the total number of contacts for the period was 65.4 million; an increase of 31.4% year-on-year. Over 77% of those contacts were made by telephone or SMS.⁷

Regulation

The industry notes that debt collectors are exposed to a myriad of laws and regulations, including laws relating to licensing, trust accounting, anti-money laundering and counter-terrorist financing, consumer credit, privacy, consumer protection and corporate governance.

The industry believes that the statistically low level of formal complaints does not warrant an escalated level of regulatory intrusion and that the approach of those states that have moved to negative licensing regimes should prevail. However, such a regime should be streamlined and adopted nationally. This will reduce confusion amongst regulatory models and reduce compliance costs.

Many in the industry have a genuine desire to improve the reputation and perception of the industry. In line with this desire, there is support for enforcement action against 'rogues' in the industry that engage in illegal practices.

Dispute resolution

The industry accepts a dispute resolution regime that includes external processes and oversight. However, it argues that those processes should be exercised only after a consumer has attempted to resolve the matter directly with the debt collection business. Further, the external process should recognise the internal resolution process that has preceded it. In effect, the industry argues that external dispute resolution should not be permitted to become a forum in which to delay and frustrate the payment of legitimate debts, when these are affordable for the consumer.

Regulators

The regulatory environment for debt collection is discussed at length in the report. At the federal level, the ACCC and ASIC administer consumer protection legislation. At the state level, there are regulators responsible for consumer protection and licensing of debt collectors.

Regulators note that where debt collection complaints occur they are often in relation to a dispute about the nature of the debt itself, rather than the conduct of

⁷ Australian Collectors and Debt Buyers Association (ACDBA), 2014, Member data survey – 2014, September, 2014.

debt collectors. However, there are also complaints about illegal debt collection practices, in particular misleading, unconscionable, harassing and coercive conduct. These complaints are very serious, and can result in significant consumer detriment.

The ACCC and ASIC argue that such breaches may sometimes reflect a lack of industry-wide understanding of the collectors' obligations, but there is further concern that some elements of the debt collection industry are aware of their obligations, yet still act contrary to them.

Both the ACCC and ASIC have displayed a willingness to take enforcement action in appropriate matters, such as where businesses are engaging in systemic non-compliant behaviour or behaviour that is creating detriment for vulnerable consumers.

As noted above, many complaints are the result of poor information flow between creditor, collector and consumer. The ACCC and ASIC produce a joint guide for consumers who are dealing with debt issues, titled *Dealing with debt collectors: your rights and responsibilities*.⁸ Some regulators believe there is a greater role for industry in educating consumers about how to exercise their rights.

Poor levels of community education can result in consumer harm. In particular, regulators have noted that consumers from lower socio-economic backgrounds are at greater risk of harm and are vulnerable to non-regulated external resolution processes, notably credit repair agencies, which can cost consumers considerable amounts of money for services that are usually free of charge.

A number of state based regulators have noted that reliance upon such services often arises from difficulties consumers face in negotiating repayment plans and other outcomes directly with debt collectors or creditors.

There is general agreement among regulators that the current level of regulation is adequate, although further streamlining of regulatory structures and models may be desirable. However, regulators are in broad agreement that regardless of the final model, a process of formal external dispute resolution is optimal.

The ACCC remains concerned about practices that affect vulnerable and disadvantaged consumers. This is an ongoing priority for the ACCC, who will take appropriate action where breaches of the law are identified.

⁸ <https://www.accc.gov.au/consumers/debt-debt-collection/dealing-with-debt-collectors>

Retailers

Retailers and other credit providers are the businesses to whom a debt was originally owed. They often conduct their own internal collection processes, utilise contingent debt collectors and sell debts to debt purchasers. Examples include energy retailers, telecommunications providers, healthcare providers and education providers. Banks and other financial services providers are not included due to credit regulated debt being excluded from the scope of the research.

In the case of energy retailers, most noted the rising cost of energy as the primary contributor to complaints. Energy retailers also noted that low levels of consumer education about household consumption is a key factor leading to debt related issues in the sector.

The sector notes that it does have an important role to play in improving consumer outcomes, particularly education. During interviews it was also noted that a range of government strategies, such as the introduction and use of smart meters, may provide some benefits to consumers who are experiencing financial difficulties or hardship.

Telecommunications providers note that issues relating to data quality between retailers and the debt collection industry were a key focus given the potential for damage to brand and reputation. Effective screening of debts for disputes and hardship prior to sale was viewed as best practice, and one way issues can be eliminated.

The telecommunications sector also noted the need for effective contract management and control mechanisms with the debt collection businesses they engage. In particular, they noted that customer experience and dispute resolution are key measures of the performance of debt collection businesses, not just recovery performance.

Both the energy and telecommunications sectors acknowledged the highly automated nature of collections within their industries, which is attributable to the large volume of accounts managed by retailers. There is an acknowledgement that such systems result in a 'one-size fits all' approach to debt management, which may not always take into account unique individual circumstances.

Retailers have stressed their understanding of the importance of adequate systems and processes to manage customer transactions, but note there will always be challenges and complexities when dealing with multiple systems managing millions of customers.

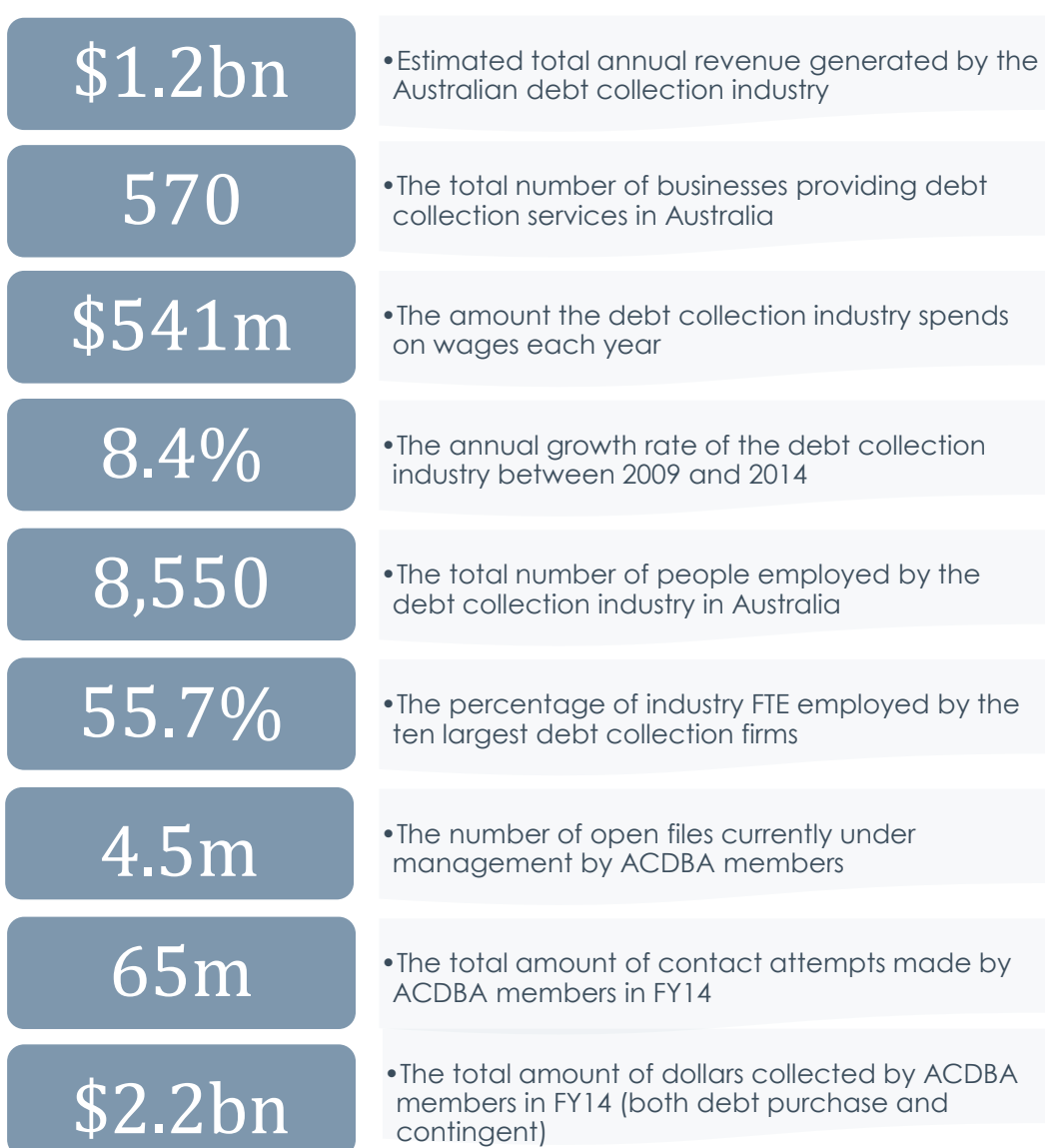
In essence, most retailers noted the important role they play in providing collections outcomes for consumers, but believe a multi-pronged approach that includes involvement from other stakeholders is essential.

MARKET ANALYSIS

Snapshot

The graphic below provides a snapshot of the key demographic markers for the debt collection industry.⁹ The ACDBA estimates that its members account for around 70% of all debt collection activity undertaken in Australia.

The industry has experienced strong growth over the last five years recording annual growth rates of 8.4%; more than 3 times greater than Australia's average annual growth rate. However, this is expected to slow to 5.1% for the period to 2019.¹⁰



⁹ IBISWorld (Kelly, A), Debt collection in Australia: Industry Report N7293a, June 2014; ACDBA: 2014 Member Data Survey; Anteris DCIR survey 2014

¹⁰ Ibid

Industry Structure

The Australian debt collection industry is organised along four distinct service or product lines. This section provides an overview of each, and examines the broader trends influencing each segment.

Table 1: Product and Service Offerings

Segment	Description
Debt Purchase	Also referred to as Purchase Debt Ledger collections, Debt Acquisition or Portfolio Collections. This is where debts are purchased from the original credit provider, typically banks, telecommunications providers and energy providers. Debts are often sold by credit providers on a forward flow arrangement (assignment to a debt purchaser once a debt falls into arrears, generally after 180 days), or as a parcel, where debts that have defaulted over a set period are bundled together and then sold. The sale of debt is managed directly by the credit provider, or through intermediaries who act on behalf of a credit provider.
Contingent Debt Collection	Contingent Collection is where the original credit provider refers debt to a debt collection business to collect on its behalf. Upon successful recovery, the debt collector is generally paid an agreed commission, although other remuneration models exist. An example is fee for service, where the debt collector charges fees based upon an agreed level of activity. Contingent collection is the most widely recognised form of debt collection in Australia, and tends to be used as the first approach by many businesses when considering their broader debt collection strategies.
Business Process Outsourcing (BPO)	Also referred to as Outsourced or First Party Collections, this is where all activity is undertaken in the name of the creditor (the business to whom the debt is owed). In most cases, BPO services are delivered with the collector linking directly into client systems, and closely following client policies and procedures. In these cases, the service effectively mirrors a labour hire arrangement, although several other models exist. Use of BPO services is common in the banking, finance, telecommunications and energy sectors. Many BPO providers also provide other services, such as IT or customer service.
Mercantile Services	Mercantile Services include process serving (legal documents), debtor locations, field calls (face-to-face visits), asset recovery (generally motor vehicle repossessions), and investigations. Many of the operators in this segment are smaller businesses that offer multiple services, and will sometimes extend their product offering to include debt collection.

Industry Trends

Mercantile Services

As the market has developed, there has been a far greater distinction made between businesses providing mercantile services and debt collection more generally. This divide has occurred naturally as larger debt collectors have based their approach around the use of sophisticated high volume telephony environments, while a significant amount of activity in the mercantile space still occurs face to face.¹¹

As such, industry views are evolving, with mercantile services now less likely to be regarded as debt collection itself, but rather ancillary activities that may or may not connect to a broader debt collection process. These activities generally extend to field calls, process serving or debtor location.

The Institute of Mercantile Agents (IMA) conducted a survey of members in January 2015, with 31% of respondents stating they provide some form of debt collection service. The typical IMA member is also likely to be a small business, with 68% indicating they employed 10 or fewer employees, and 34% operating from a regional or remote location.¹²

This difference between mercantile services and telephony based debt collection was recognised in the recent *Debt Collectors (Field Agents and Collection Agents) Act 2014* (Qld) introduced by the Queensland Parliament in December 2014. This Act clearly identified the activities of each sector, and creates a separation of licensing requirements for telephone based collectors and mercantile field agents. Consumer Affairs Victoria (CAV) also noted this distinction in their 2011 Debt Collection Harmonisation Options Paper.

Debt Purchase

The debt purchase market continues to grow strongly, fuelled by growth from financial services providers. However, while the supply of debt offered for sale continues to increase, demand has also been at an all-time high. This has resulted in record high prices for many debt portfolios, and a question over the sustainability of such practices. The possibility of changes to capital adequacy provisions for banks, which may translate into banks selling debt to increase their capital as a percentage of their risk managed assets, also has the potential to drive future growth.

There is a reasonable level of concentration in the debt purchase market, with the top five businesses accounting for over 60% of the market when measured by total debt under management. The last three years has seen the introduction of a

¹¹ ACDBA (2011) Australian Collections Industry Snapshot

¹² <http://www.imal.com.au/eAGENT/eagentv48i01/index.html>: February/March 2015

number of new entrants, mainly smaller niche operators. Some of these businesses have diversified from contingent collections businesses.

The other notable trend in the debt purchase market is a gradual repositioning of the core function, moving away from debt collection by itself, and operating more as a financial services business. A number of debt buyers refer to acquired debtors as customers and treat them accordingly; managing the asset more like a loan book as opposed to a typical debt collection portfolio.

Critical to success in the debt purchase segment is analytical capability for both portfolio pricing and collections treatment. Strong compliance, the ability to adequately fund acquisitions and efficiently manage collection operations are also key considerations when reviewing performance within the segment.

Contingent Collections

Contingent collections is a competitive market, with an estimated 500 businesses providing some form of service, ranging from sole traders to large public companies. Despite this fragmentation, it is estimated that the top twenty companies in this segment account for at least 85% of the market.

Consumer debt makes up a significant portion of this segment, with large retailers (banks, telecommunication and energy providers) and government accounting for the majority of the market. Healthcare, education and commercial recoveries are also prominent markets for contingent collections.

As outlined earlier, the primary difference between contingent collections and debt purchase is control. Retailers and credit providers hold significant power in the contingent segment, as they are able to influence price, activity levels, collection treatments and minimum compliance and technology standards. By comparison, debt purchasers maintain ultimate responsibility for the operational aspects of their debt recovery approach.

The other significant feature of the contingent segment is the impact of competition. Although not always publicly stated, recovery performance is a key factor in winning or retaining business. While not the sole criteria, recovery performance can be used to determine market share (usually on benchmarked/shared portfolios). Generally, there is a greater allocation of work directed to the better performing collection businesses.

Businesses not coping with the operational aspects of debt recovery will struggle. Furthermore, brand and reputation can easily be tarnished if there is any systemic or ongoing degradation in recovery performance, or a failure to maintain minimum compliance and conduct standards.

While recovery performance and operational capability are critical, the contingent segment is also largely driven by the quality of the customer relationship. Setting aside the general requirement for debt collection businesses

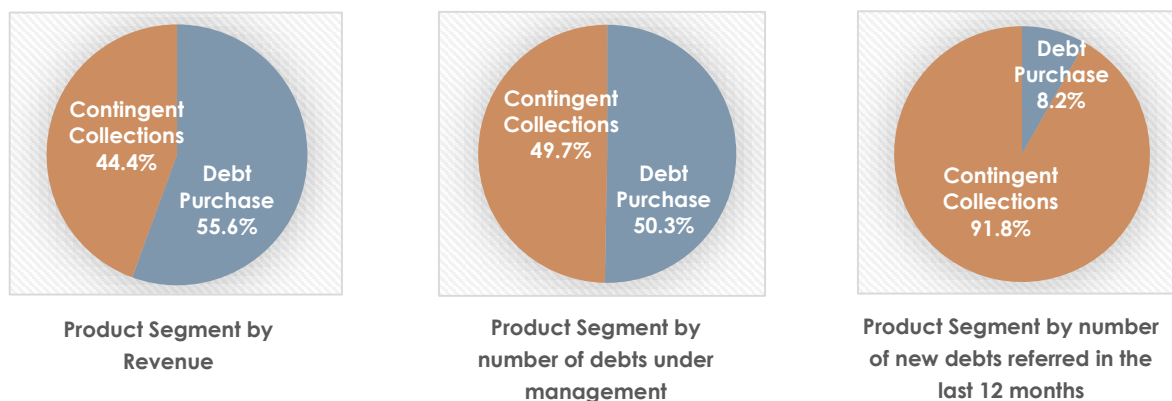
to positively represent their business, the majority of customers also value insight, and will favour businesses that can demonstrate a strong understanding of their industry, and a proactive approach to managing the work.

Contingent collections is highly transactional in nature. Much of the available industry analysis tends to assess market share by revenue, and subsequently concludes that debt purchase represents the largest share of the sector. However, from a consumer perspective it is useful to examine the industry by activity rather than revenue.

When looking at the debt characteristics of the debt purchase and contingent markets, there are some notable differences. Banks and financial institutions tend to favour debt purchase as a strategy, and refer debt with a higher average balance as compared to the telecommunication or energy sectors, which tend to favour contingent as the primary debt collection strategy.

The other key point is that most contingent debts are referred to a debt collector for a specific period, generally between 60 to 180 days, which means significant volumes of debt can be churned through a collection process in a relatively short time. Debt purchasers tend to manage debt through arrangements, which are generally longer term (over 5 years) and continue to build over time. This creates the distortion effect evident in the charts below.¹³

Graphs 1 to 3: Analysis by Product Segment



As seen above, when analysing the debt collection industry by revenue,¹⁴ debt purchase clearly accounts for the greatest market share. It is much the same when looking at total debt under management (by numbers), with the split between debt purchase and contingent roughly even. However, when reviewing new debt referred or sold, the level of debt referred for contingent collection is ten times higher than the number of debts purchased.

¹³ Anteris DCIR survey 2014

¹⁴ IBISWorld (Kelly, A), Debt collection in Australia: Industry Report N7293a, June 2014

For context, when reviewing data provided in the survey responses, in 2014 there were 4.2 million individual debts referred for contingent collection (this will include an element of re-referred debt), while only 380,000 individual debts were purchased. While the number of debts purchased may have been fewer in number, the average debt value is generally far greater, and so this is still significant from a market perspective.

As a rule, the higher the number of debt collection contacts, the greater the likelihood of complaints. These numbers also provide an insight into the increasingly transactional nature of the contingent collections market.

Business Process Outsourcing (BPO)

The BPO segment has become attractive to debt collection businesses, despite the lower margins on offer. One reason for this is the reduction in risk when compared to the contingent or debt purchase markets. This is because most BPO contracts operate on fixed fee pricing models, where it effectively becomes a labour hire arrangement. While management of contract Key Performance Indicators remains critical, BPO margins are generally based on activity, and therefore not subject to fluctuations in recovery performance and subsequent commissions.

Many of the larger retailers in this market undertake some level of early collections through their outsourced customer service teams. This space is dominated by specialist BPO businesses.

Another driver within the BPO segment has been the trend for debt collection businesses to establish offshore operations. At present a range of locations are used by industry, including India, the Philippines, Fiji and New Zealand. The immediate benefit of an offshore capability is generally a reduced cost of operation, which can be passed on to customers in the form of lower pricing, or taken as margin. This allows debt collection businesses to compete with the major BPO businesses, while differentiating through specialisation.

In this sense, the BPO segment is synergistic and can provide debt collection businesses with a competitive advantage. Despite this, many collection businesses have struggled to develop such opportunities, likely due to the BPO specialists' ability to integrate a debt collection element into other services, such as IT and customer service.

The final point to note with BPO activity is that all work is undertaken in the name of the creditor. From a consumer perspective, it means any complaint or conduct issues will always be the responsibility of the creditor. This is similar to contingent collections, with the key difference that the consumer will be aware they are dealing with a debt collector and not the creditor.

LICENSING AND REGULATORY FRAMEWORK

A broad range of legislative and regulatory requirements apply to debt collection businesses. Table 2 provides an overview of the most relevant laws and their purpose. Table 3 follows, and provides a breakdown of debt collection licensing requirements for each state and territory.

Table 2: Overview of Regulation relating to Debt Collection

Regulation	Purpose
Commonwealth consumer protection laws	<p>The Australian Consumer Law (ACL) is Schedule 2 of the Competition and Consumer Act 2010 and is adopted in state and territory legislation as a single, national law, which applies consistently across state borders. It is the principal consumer protection law in Australia.</p> <p>Under the ACL, consumers have the same protections and expectations about business conduct wherever they are in Australia. Similarly, businesses have the same obligations and responsibilities wherever they operate in Australia.</p> <p>The key consumer protection provisions of the ACL are also contained in the Australian Securities and Investments Commission Act 2001 (ASIC Act), which regulates financial services.</p> <p>The ACL is jointly enforced by the ACCC and state and territory consumer protection agencies, while the ASIC Act is enforced by ASIC.</p> <p>Key tenets of the ACL as it relates to debt collection include prohibition of the following:</p> <ul style="list-style-type: none"> ▪ use of physical force ▪ undue harassment and coercion ▪ misleading and deceptive conduct ▪ unconscionable conduct <p>A debt collector or creditor who is found to have breached the harassment and coercion provisions or false or misleading representations or unconscionable conduct provisions is liable to penalties of up to:</p> <ul style="list-style-type: none"> ▪ \$220,000 under the ACL or \$340,000 under the ASIC Act (in the case of individuals – per breach) ▪ \$1,100,000 under the ACL or \$1,700,000 under the ASIC Act (in the case of corporations – per breach)
State and territory fair trading laws	<p>The ACL is applied as a law of the Commonwealth and each state and territory. However, the Victorian Australian Consumer Law and Fair Trading Act 2012 (Vic) also prohibits certain conduct, including undue harassment and coercion and cease contact provisions. The Victorian provisions also permit debtors to seek up to \$10,000 as compensation for humiliation and distress caused by non-compliant debt collection conduct.</p>

<p>National Consumer Credit Laws</p>	<p>Reforms to consumer credit law have resulted in a single national consumer credit regime governed by the National Consumer Credit Protection Act 2009 (NCCP) which includes the National Credit Code (NCC) as Schedule 1. The NCC replaces previous state-based consumer credit codes and the Uniform Consumer Credit Code. ASIC is responsible for administering the NCCP. The NCC applies to credit contracts entered into on or after 1 July 2010 where:</p> <ul style="list-style-type: none"> ▪ the lender provides credit in the course of business or incidental to any other business where a charge is made or may be made for providing the credit ▪ the debtor is a natural person or strata corporation ▪ the credit is provided for personal, domestic or household purposes, or to purchase, renovate or improve residential property for investment purposes, or to refinance credit previously provided for this purpose. <p>The NCCP applies a licensing regime to those providing regulated credit or credit assistance and therefore require an Australian Credit Licence. Purchasers of regulated credit are providers for the purposes of the regime, but debt collectors acting on behalf of a credit licensee may have the benefit of an exemption. The NCCP is enforced by ASIC.</p>
<p>National Energy Retail Law</p>	<p>The National Energy Retail Law (NERL) and National Energy Retail Rules commenced on 1 July 2012 in the Australian Capital Territory (ACT) and Tasmania (for electricity only). South Australia commenced the NERL on 1 February 2013 and New South Wales on 1 July 2013. Queensland will commence the NERL on 1 July 2015.</p> <p>These laws and rules provide a national customer protection framework for the retail sale of electricity and gas to residential and small business energy customers. This includes requiring energy retailers to develop and maintain a customer hardship policy that sets out their approach to identifying and assisting customers experiencing difficulty paying their energy bills. It also includes obligations regarding when a customer can be disconnected.</p>
<p>State and territory unauthorised documents laws</p>	<p>Unauthorised documents Acts in each state and territory make it an offence to design collection letters of demand in a way that makes them look like court documents.</p>
<p>State and territory limitation of actions laws</p>	<p>Each state and territory sets limitation periods on debt recovery actions. These generally bar a remedy to the creditor if a defence pleading expiration of the limitation period is filed.</p> <p>In the case of simple contracts (which include the majority of debts referred for collection) the limitation period is normally six years (however, in the Northern Territory a three year period applies.)</p> <p>In some jurisdictions, a payment or acknowledgment of the debt will re-start the limitation period even after the original period has expired. Limitation acts also regulate the enforcement of court judgments.</p>

<p>Bankruptcy laws</p>	<p>Under the Bankruptcy Act 1966, regulated by the Australian Financial Security Authority, acceptance of a Part IX debt agreement or execution of a personal insolvency agreement prevents a creditor taking further action against a debtor in relation to their provable debts.</p> <p>A debtor is released from these debts after discharge from bankruptcy, or when all the obligations under the debt agreement are completed. A personal insolvency agreement may provide that the debtor is released from provable debts. Most unsecured debts will be provable.</p>
<p>Privacy laws</p>	<p>Part IIIA of the Privacy Act 1988 (Privacy Act) governs the handling of credit reports and other credit-worthiness information about individuals by credit reporting agencies and credit providers.</p> <p>Some of the requirements include what information can be stored on a credit report, how long such information can be included, and to whom and under what circumstances access is allowed.</p> <p>The Australian Privacy Principles (APPs) also regulate certain private sector entities in their dealings with personal information. These provisions in schedule 1 of the Privacy Act, where applicable, regulate the collection, use and disclosure of personal information, and impose obligations on organisations to maintain accurate, complete and up-to-date records, and allow individuals access to, or correction of, information held about them.</p> <p>The Office of the Australian Information Commissioner (OAIC) has published guidelines to assist with the interpretation and implementation of the APPs. The OAIC enforces the Privacy (Credit Reporting) Code 2014. A breach of the Code is a breach of the Privacy Act.</p>
<p>ACCC/ASIC Debt Collection Guideline (2014)</p>	<p>The ACCC/ASIC Debt Collection Guideline reflects the ACCC and ASIC's view of the law and provides practical guidance on what creditors and collectors should and should not do to minimise their risk of breaching the Commonwealth consumer protection laws that may apply when undertaking debt collection activities.</p> <p>This includes explicit advice about the prohibitions and remedies against creditors or debt collectors who engage in:</p> <ul style="list-style-type: none"> ▪ the use of physical force, undue harassment or coercion ▪ misleading or deceptive conduct ▪ unconscionable conduct <p>The guideline applies to both creditors who are directly involved in debt collection and to specialist external agencies who provide debt collection services. When a creditor uses an agent for collection, the creditor (as principal) will generally be liable for their agent's conduct when that conduct comes within the agent's express, implied or ostensible authority.</p> <p>The guideline also serves as a point of reference for financial counsellors and consumer advocates when negotiating with creditors or collectors about their practices.</p>

Most state and territory jurisdictions have occupational licensing requirements applying to debt collection activities. These laws impose certain obligations on licensees, and set out grounds on which the relevant authority can refuse to grant or cancel a licence. The following table provides an overview of Australian debt collection licensing requirements as at February 2015.

Table 3: Debt Collection Licensing requirements

State/ Territory	Authority	Licensing requirement
VIC	Consumer Affairs Victoria	<p>The relevant legislation in Victoria is the Australian Consumer Law and Fair Trading Act 2012 (ACLFTA). This incorporates the ACL but has additional provisions relating to debt collection.</p> <p>From a licensing perspective, from July 2011 Victorian debt collectors are no longer required to be licensed, unless they fall into the category of prohibited persons or corporations, in which case they were required to obtain permission from the Business Licensing Authority to engage in debt collection.</p> <p>Reasons for refusing a licence include:</p> <ul style="list-style-type: none"> ▪ holding a previous private security licence or registration that was cancelled or suspended ▪ having been found guilty of an offence involving fraud, dishonesty, drug trafficking or violence punishable by imprisonment of three months or more ▪ having been found to have been involved in the use of physical force, undue harassment or coercion in contravention of the ASIC Act, or an equivalent provision in state or federal legislation <p>Prohibited persons who continue to undertake debt collection activity can be subject to a fine of 240 penalty units or two years imprisonment.</p>
QLD	Office of Fair Trading	<p>The Debt Collectors (Field Agents and Collection Agents) Act 2014 came into effect in December 2014.</p> <p>It separates the activities of telephone based collectors (Collection Agents) and Debt Collectors (Field Agents or subagents), who undertake repossessions, process serving and face-to-face debt collection.</p> <p>Under the new laws, telephone based Collection Agents no longer require a licence, although they must still pass the suitable persons test, which means the absence of any serious convictions, or a previous licence disqualification or suspension.</p> <p>Field based debt collectors are still required to be licensed, registered and hold photo ID. Eligibility criteria is essentially the same as Collection Agents, with some additional discretion around suitability. The licence fee is \$1242.60 for one year.</p> <p>Principal collection agents who receive money from debtors need to follow a specific process to open and operate a trust account under the Agents Financial Administration Act 2014.</p>

NSW	NSW Police	<p>In NSW debt collector's fall under the Commercial Agents and Private Inquiry Agents Act 2004.</p> <p>Businesses operating in the industry must hold a Master Licence, with individual employees required to hold an Operator Licence, and work under a Master Licence holder.</p> <p>There are eligibility criteria applied to both the Master and Operator Licensees. Master Licensees must pass stringent integrity requirements in relation to both themselves and any 'close associates' in the business (this could include someone with a financial interest or control who could unduly influence the Master Licence holder, such as a Director or major shareholder), as well as no record of serious convictions, or a previous disqualification or suspension in managing a corporation.</p> <p>The Operator Licensee is subject to the same integrity requirements, and a licence will not be granted if the individual has been prohibited from undertaking such work previously, or has had any serious offences recorded against them. Individuals holding an Operator's Licence must also meet minimum qualification requirements (Certificate III in Mercantile Services) within 24 months of taking up employment as a debt collector.</p> <p>From a qualifications perspective, Master Licensees are only required to complete a module on managing a trust account.</p>
SA	Consumer and Business Services	<p>In SA, debt collection falls under the Security and Investigations Act 1995, which stipulates that any employee collecting or requesting the payment of debts must hold an Investigation Agents Licence.</p> <p>Certain eligibility criteria exist for obtaining a Licence; applicants are subject to a police check, must pass the fit and proper person test, have not been convicted of a Prescribed Offence, and have not been suspended or disqualified from practicing or carrying on an occupation, trade or business under Australian law.</p>
WA	Department of Commerce	<p>WA has specific legislation relating to the licensing of debt collection; the Debt Collectors Licensing Act 1964, which sets out licensing requirements and regulates the management of trust accounts.</p> <p>Conducting business as a debt collector without the appropriate licence is an offence, and anyone operating without a licence is not entitled to be paid for services.</p> <p>To obtain a licence, applicants must be a fit and proper person and be a person of good character and repute.</p>
TAS	Consumer Affairs and Fair Trading	<p>In Tasmania debt collectors must hold an Agent – Body Corporate Licence (Commercial Agent) as prescribed by the Security and Investigations Act 2002.</p> <p>Applicants are subject to a police check and are required to meet the specific suitability criteria: have not been convicted of a criminal or drug related offence; have not been suspended or disqualified from practicing or carrying on an occupation, trade or business; and is not an undischarged bankrupt. Individuals applying for an Agent – Body Corporate Licence are also subject to mandatory fingerprinting.</p>

NT	Department of Business	<p>Northern Territory debt collectors must be licensed under the Commercial and Private Agents Licensing Act. There are four licensing types, with the Commercial Agents Licence being used principally for debt collection purposes.</p> <p>A licensed agent must not carry on a business unless there is present and in charge of the operations, an approved manager if the licensee is a corporation, and if the agent is a natural person, either the agent or another natural person approved by the Commissioner to be the manager.</p> <p>The Commissioner of NT Consumer Affairs will carefully examine the character, criminal history and reputation of the person before allowing them to be appointed as the manager. Collectors must satisfy the character test and not have a criminal history involving fraud, dishonesty or physical violence offences. The Commissioner will also take into account the reputation of the applicant in deciding whether they are a fit and proper person to be granted approval.</p>
ACT	NA	<p>There is no licensing regulation for debt collectors in the ACT. Successive governments have worked on various licensing models, but to date none have been enacted. The Institute of Mercantile Agents notes that some ACT practitioners demonstrate their commitment to regulation by maintaining licences issued pursuant to the NSW industry legislation.</p>
National	Australian Securities and Investments Commission (ASIC)	<p>Debt purchasers are required to hold an Australian Credit Licence when purchasing 'credit regulated' debt, or undertaking credit activity. There are two broad categories of credit activities, being the provision of a credit contract or consumer lease, and securing obligations under contract, and credit services.</p> <p>Credit activities covered by these broad categories are:</p> <ul style="list-style-type: none"> ▪ providing credit under a credit contract ▪ being a lessor under a consumer lease ▪ benefiting from mortgages or guarantees relating to a credit contract ▪ exercising the rights or performing the obligations of a credit provider, lessor, mortgagee or beneficiary of a guarantee ▪ suggesting a consumer apply for a credit contract or consumer lease, or an increase to a credit limit ▪ assisting a consumer to apply for a credit contract or consumer lease, or an increase to a credit limit ▪ acting as an intermediary to secure provision of a credit contract or consumer lease for a consumer ▪ providing other prescribed credit activities <p>The activities of debt purchasers are specifically noted in ASIC Regulatory Guide 203, which states that you need to hold a credit licence if you are, and you are exercising the rights of, a credit provider, lessor, mortgagee, or beneficiary of a guarantee following a legal assignment to you—this includes where you have been assigned those rights by a previous assignee, and not by the original party to the contract. The requirement to hold an Australian Credit Licence does not apply to contingent debt collectors, given they are acting as an agent on behalf of their clients.</p>

ACCC/ASIC Debt Collection Guideline

The ACCC/ASIC Debt Collection Guideline is used extensively by the debt collection industry, and provides practical guidance on what creditors and collectors should and should not do to minimise their risk of breaching the ACL, ASIC Act and NCCP when undertaking debt collection activities.

As the regulatory environment has continued to evolve, there has been an increasing reliance on the guideline to provide clarity for debt collectors. The guideline is particularly important for those collectors who do not have the scale or expertise to interpret their legislative requirements more broadly. When discussing use and relevance of the debt collection guideline, the feedback from both industry and state based regulators has been highly complementary.¹⁵

The effectiveness of the debt collection guideline is increased by the inclusion of a requirement of compliance in a number of industry codes. For example, the following codes require signatories, and their debt collectors, to comply with the ACCC/ASIC Debt Collection Guideline:

- Australian Bankers' Association Code of Banking Practice
- Customer Owned Banking Association Customer Owned Banking Code of Practice
- Telecommunications Consumer Protection Code
- Energy Retail Code (Victoria)

The guideline applies to every business who undertakes some form of collection activity. Large retailers are aware of their obligations, and require evidence of compliance in their contracts with debt collectors. While the ACCC and ASIC have encouraged all businesses to use the debt collection guideline to ensure their in-house collection activities are compliant with Commonwealth consumer protection laws, there remains a question over how consistently the guideline is applied across business more generally.

As the guideline points out, a creditor may be responsible for their agent's collection activities even if the agent acts in a way that is contrary to an agreement or understanding between the creditor and agent about how the collection is to be undertaken. Industry representatives note that in some instances the contractual compliance requirements of clients will extend further than those of regulators.¹⁶

¹⁵ Anteris DCIR Interviews 2014

¹⁶ ACDBA, 2014, Submission to 'Inquiry into debt collection in NSW', 16 May 2014

Australian Credit Licence

While the collection of credit regulated debt is excluded from the scope of this research, it is necessary to address it for analysis purposes. Many debt collection businesses handle both types of debt, and as such, regulations concerning one type of debt can affect the way in which they collect both.

Since 1 July 2010, a national licensing scheme has applied to businesses that engage in credit activities under the NCCP. Businesses that engage in credit activities will generally require an Australian credit licence or authorisation from a credit licensee before commencing operations.¹⁷

'Credit activity' is defined in the NCCP and includes activities relating to the provision of credit contracts and consumer leases, securing payment obligations by related mortgages and guarantees, and the provision of credit services. Businesses will only be engaging in credit activities if those activities relate to credit contracts or consumer leases to which the National Credit Code applies.

As a consequence, businesses that purchase credit regulated debt are required to hold an Australian Credit Licence. The following excerpt from ASIC Regulatory Guide 203 explains the requirement:

*You need a credit licence if you are, and you are exercising the rights of, a credit provider, lessor, mortgagee, or beneficiary of a guarantee following a legal assignment to you—this includes where you have been assigned those rights by a previous assignee, and not by the original party to the contract.*¹⁸

The Australian Credit Licence places additional obligations on debt purchasers that do not apply to contingent collectors. These include:

- enhanced standards of conduct including a requirement to act honestly, efficiently and fairly, and to properly train and supervise people who act on their behalf
- an internal dispute resolution procedure that complies with the standards and requirements made or approved by ASIC in accordance with the regulations; and covers disputes in relation to credit activities engaged in by licensee or its representative
- mandatory membership of an EDR scheme.
- publication of a credit guide providing (among other things) the process for registering a compliant, and details of the EDR scheme.

¹⁷ Regulatory Guide 203: Do I need a credit licence? <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-203-do-i-need-a-credit-licence/>

¹⁸ See ASIC Regulatory Guide 203, Appendix 1, p 43

Consumer Protection

The debt collection industry is subject to regulation under the ACL. Those collecting credit regulated debt are subject to the ASIC Act, which contains many of the same consumer protection provisions. Businesses that breach the law may be subject to significant penalties. For example, a debt collector or creditor who is found to have breached the harassment and coercion provisions or false or misleading representations or unconscionable conduct provisions is liable to penalties of up to:

- \$220,000 under the ACL or \$340,000 under the ASIC Act (in the case of individuals – per breach)
- \$1,100,000 under the ACL or \$1,700,000 under the ASIC Act (in the case of corporations – per breach)

Both the ACCC and ASIC have taken enforcement action to address problematic conduct relating to debt collection. This includes actions against retailers collecting debts, debt collection businesses and lawyers.

Consumer advocates have noted that while the ACCC/ASIC Debt Collection Guideline highlights best practice and assists the industry to comply with the law, a greater emphasis on enforcement is necessary to address excessive, harassing and coercive behaviour in the industry.

Ombudsmen also recognise the important role oversight and enforcement play in setting standards, noting that court judgements set clear precedents and establish baselines for behaviour.

Industry has noted that enforcement proceedings have provided greater guidance and clarity on expected minimum standards within the industry. Larger members of the industry have also argued that more enforcement action should be taken against smaller, rogue operators that may tarnish the reputation of the broader industry.

However, regulators note that conduct issues are not exclusive to smaller operators. The case studies on the following pages highlight some of the conduct that has breached the law and prompted enforcement action by the regulators.

Case Study 1 (ACCC): Conduct of a telecommunications company

In 2013, the Federal Court ordered that Excite Mobile pay penalties totaling \$455,000 for engaging in false, misleading and unconscionable conduct, and using undue coercion in relation to the selling and obtaining payment for mobile phone services.

The conduct included:

- creating a fictional complaints handling organisation called 'Telecommunications Industry Complaints' which deceived consumers into believing that complaints were being handled by an independent organisation
- sending letters to at least 1074 of its customers, falsely representing that the letters were from an independent debt collector, and that the debt alleged to be owed had been referred for collection, when in fact there was no such independent debt collector
- making false representations about the rights and remedies in the event that legal proceeding were commenced against the consumer, including:
 - › that a court would order that consumers were required to pay an additional 20% of the alleged debt for failing to pay on time
 - › that a court would order the repossession of all assets of value owned by the consumers, including children's toys.

The Court also ordered that the two directors of the company pay penalties of \$55,000 and \$45,000 respectively for their involvement in the conduct, and disqualified the two directors from managing a corporation for a period of three years and two and a half years respectively. An employee who was involved in the conduct was also ordered to pay a penalty of \$3,500.

Injunctions were imposed on each of the directors and the employee, restraining them from engaging in similar conduct for a period of seven years. The individuals were also ordered to pay the ACCC's costs.¹⁹

¹⁹ <https://www.accc.gov.au/media-release/court-orders-excite-mobile-to-pay-455000-for-engaging-in-false-misleading-and-unconscionable-conduct>

Case Study 2 (ASIC): Conduct of large debt collection business

In 2012, the Federal Court declared that Advanced Credit Management (ACM), one of Australia's largest debt collection companies, had engaged in misleading and deceptive conduct and undue harassment and coercion in relation to eight debtors.

The action related to a debt collector training manual that promoted practices such as threatening litigation and advising debtors that Sheriff's would attend their home or work in marked cars.

The conduct included:

- Threatening to take action such as:
 - › informing a debtor's family, friends and employer of the debt
 - › having Sheriff's Officers' attend a debtor's home or place of employment
 - › having a warrant issued for a debtor's arrest
 - › action resulting in a debtor being unable to travel overseas.
- Making false representations that:
 - › the business specialised in commencing legal proceedings for the recovery of debts
 - › the business frequently commenced legal proceedings
 - › debtors had been referred to the business' lawyers for the purpose of commencing legal proceedings
 - › the business had decided to commence legal proceedings against debtors
 - › legal proceedings, including bankruptcy proceedings, would be commenced immediately
 - › the collector would cause NSW Sheriff's officers to attend a debtor's home to serve documents

The Court ordered that ACM be restrained from engaging in misleading and deceptive conduct and undue harassment and coercion in the future and that these orders operate permanently. The business was also ordered to pay ASIC's costs.²⁰

²⁰ <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2012-releases/12-261mr-federal-court-finds-debt-collection-group-misled-and-harassed-debtors/>

Consumer advocates have cited concerns with the use of litigation in the debt recovery process. The legal costs added to a debt are often not explained and may not be justified. The content of letters can also be potentially misleading, such as threatening further action when it is not economically viable, or listing a credit default when that is not possible.

Case Study 3 (ACCC): Conduct of a lawyer

In 2011, the Federal Court found that Pippa Sampson, the principal and registered owner of Goddard Elliott lawyers, made misleading and deceptive representations in letters she sent in order to collect small debts on behalf of video rental stores.

Ms Sampson sent approximately 20,000 debt collection notices per month in the 12 months prior to the ACCC initiating proceedings. The notices were sent Australia-wide.

The Court ordered that Ms Sampson stop making the misleading representations; publish corrective notices in a number of national newspapers and industry publications; ensure herself and Goddard Elliott staff undertake trade practices compliance training; and contribute \$30,000 towards the ACCC's costs.²¹

In 2013, the Victorian Legal Services Commissioner (LSC) also brought an action against Ms Sampson, with the Victorian Civil and Administrative Tribunal (VCAT). VCAT found that Ms Sampson had breached the legal professional conduct and practice rules and was therefore guilty of professional misconduct under the *Legal Profession Act 2004*.²²

The misleading and deceptive representations by Ms Sampson included that:

- the video store was entitled to recover a specified amount in solicitor's costs in addition to the claimed debt, when the store had no necessary entitlement to recover such a cost
- the customer would incur additional costs associated with any legal action, when:
 - › if unsuccessful the video store could not recover legal costs
 - › if successful a Court would not order that legal costs relating to the recovery of a small debt be paid unless there were special circumstances
 - › there are state laws that could limit the amount of legal costs that could be awarded by the court in actions for small debts
- one of the notices was similar in format to a court document, when the document had not or was not able to be filed in a Court

²¹ <https://www.accc.gov.au/media-release/court-declares-lawyer-engaged-in-misleading-debt-collection-practices>

²² <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/vic/VCAT/2013/1177.html>

- judgment could be made without a formal court order unless the debt was paid in full or the proceeding was successfully defended, when a judgment cannot be entered without legal proceedings being instituted and without an order being obtained from a Court
- Goddard Elliott could enforce any judgment by itself, including by way of a warrant, or a garnishee order, or an attachment of earnings order, when the video store would need to win the case, apply for an order for payment and then the court must grant an order to enforce judgment.

The Victorian LSC also initiated an action against Melbourne lawyer Ms Victoria Nomikos,²³ who in 2014 was found guilty on eight counts of professional misconduct after she allowed two debt collection businesses to use her business letterhead to send misleading letters of demand to debtors. VCAT also found that Ms Nomikos had allowed the debt collection businesses to improperly lodge proceedings against debtors in the Magistrates' Court using her solicitor's credentials.

In summary, stakeholders recognised that enforcement proceedings have an important role in setting standards and establishing precedents, and is necessary to address excessive, harassing and coercive behaviour.

²³ <http://www.austlii.edu.au/au/cases/vic/VCAT/2013/1682.html>

OPERATING MODELS

Approach

At its core, the clear purpose of the debt collection industry is to recover outstanding debts that are legitimately owed. This can occur in many ways, but ultimately there is a significant reliance on personal contact with a consumer or business if such an outcome is to be achieved.

For this reason, and the fact that most debt collectors consider phone calls to be more effective than other methods of collection,²⁴ a significant amount of time and effort is applied to developing contact strategies. Along with scale, effectiveness is the key driver behind the industry's transition to the use of call centre environments for debt recovery.

The use and sequencing of different debt collection activities is typically known as a collections process or treatment strategy, and larger businesses will generally use an analytical approach to determine the most appropriate set of recovery actions. The effective use of analytics is seen as a competitive differentiator by parts of industry, and detailed later in this section.

However, once contact has been made with the consumer, it will often be the quality of the interaction that determines whether a positive outcome is achieved. It is at this point that the possibility of issues related to conduct may occur. Debt collection by its very nature can be emotive, and if the negotiation is managed poorly, the result can be a negative consumer experience, increasing the likelihood of a complaint.

This is the key issue cited by a multitude of stakeholders, including advocates, retailers and regulators, who all maintain that respect for the customer is paramount and that debt collectors should take care to understand the individual circumstances of each debtor and ensure payment arrangements are both suitable and flexible.²⁵

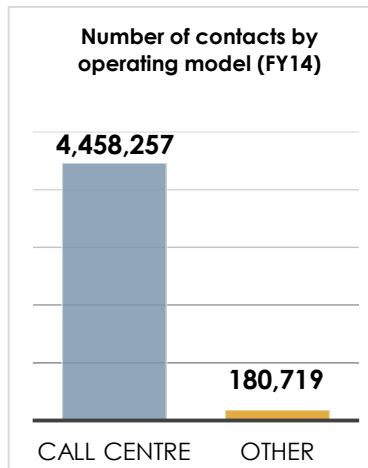
Industry has argued that this can be managed effectively by maintaining strong and robust compliance frameworks, and that the industry transition to telephony based debt recovery limits the likelihood of complaints and improves compliance.

²⁴ 70% of respondents listed phone call as the most effective collections strategy: Anteris DCIR survey 2014

²⁵ Anteris DCIR interviews 2014

Use of Call Centres

As described in the market analysis, the debt collection industry is divided along the lines of telephony based debt collection and field services. As seen in the graph below, when analysing file referrals from the 38 debt collection businesses surveyed, the overwhelming majority of debt recovery activity is undertaken by businesses operating in high volume call centre environments.



When reviewing survey data as it relates to call centre usage, it appears that less than 5% of all debt collection businesses operate call centres. Yet these call centres account for over 90% of total debt collection contacts.

Call centre technology can create genuine efficiencies for debt collectors. Larger businesses use automated diallers integrated with core debt collection systems to manage the telephony process (generally both outbound and inbound), and record call outcomes and other key performance metrics.

There are other benefits to managing work in this environment. Setting aside the obvious productivity gains from automated dialling, most technology will also allow for call routing (sending each call to the most appropriate collector or team), call recording (creating and storing a digital copy of the call), call monitoring (remote listening of calls), queue management, call scheduling and real time reporting.

These features create a number of compliance advantages, including automation of compliant contact scheduling and frequency of contacts, an improved compliance culture due to the recording and monitoring of conversations and an improved ability to isolate systemic issues or problematic behaviours relating to debtor contact.

Another more recent trend has been the introduction of Interactive Voice Response (IVR) to automate different elements of the calling process. IVR allows a pre-recorded message to be delivered to voicemail. This eliminates the need for staff to leave a message, knowing that an actual conversation will not take place. Again, this simplifies the process by ensuring that communication times, frequencies and message content are compliant.

Smaller businesses that are unable to justify the investment in a dialler environment may access outsourced dialler services, but usually without integration into core systems, and therefore with decreased functionality. The use of manual data segmentation also creates the potential for increased compliance risk. 'Blast' messaging is a common example, with pre-recorded calls queued and released throughout the day, regardless of call type or contact status. Debt collectors that

do not use call centre technology will be constrained to the degree in which they can take on high volume work.

As noted earlier, larger debt collection businesses are making greater use of offshore call centres. Of the 38 debt collection businesses surveyed or interviewed for this review, 10 stated they maintained an offshore capability. There are generally two models used to deliver services through an offshore operation. The first involves a subcontracting arrangement, where a third party will provide end-to-end services, typically premises, technology, telephony systems and employees to undertake the work. Third parties are generally paid on a *per call* or *per FTE* basis, with incentives or hurdles linked to a range of performance metrics. Critical to success with this model is an effective and robust contract management mechanism, along with adequate support and training.

The other model involves the use of offshore operations as a full subsidiary of the Australian business. This is favoured by larger businesses, as it allows for greater control throughout the entire call and collections process. This also extends to data transfer and security, knowledge of relevant Australian laws, and improved management of sensitive issues such as hardship. While this approach is considered best practice from a compliance standpoint, it also requires additional effort in terms of set up and ongoing operational management.

Calls managed via offshore operations tend to be less effective than those undertaken locally. As such, some businesses will segment the work, with straight forward or lower balance debt sent offshore, and larger more complex debts being managed locally.

Whichever model is adopted, the business will generally be liable for the actions of the call centre employees. As such, support and training are key aspects of an effective offshore call centre. The metrics for success are rarely based on recovery performance alone, and will generally incorporate a range of compliance and service level measures.

Use of Analytics and Profiling

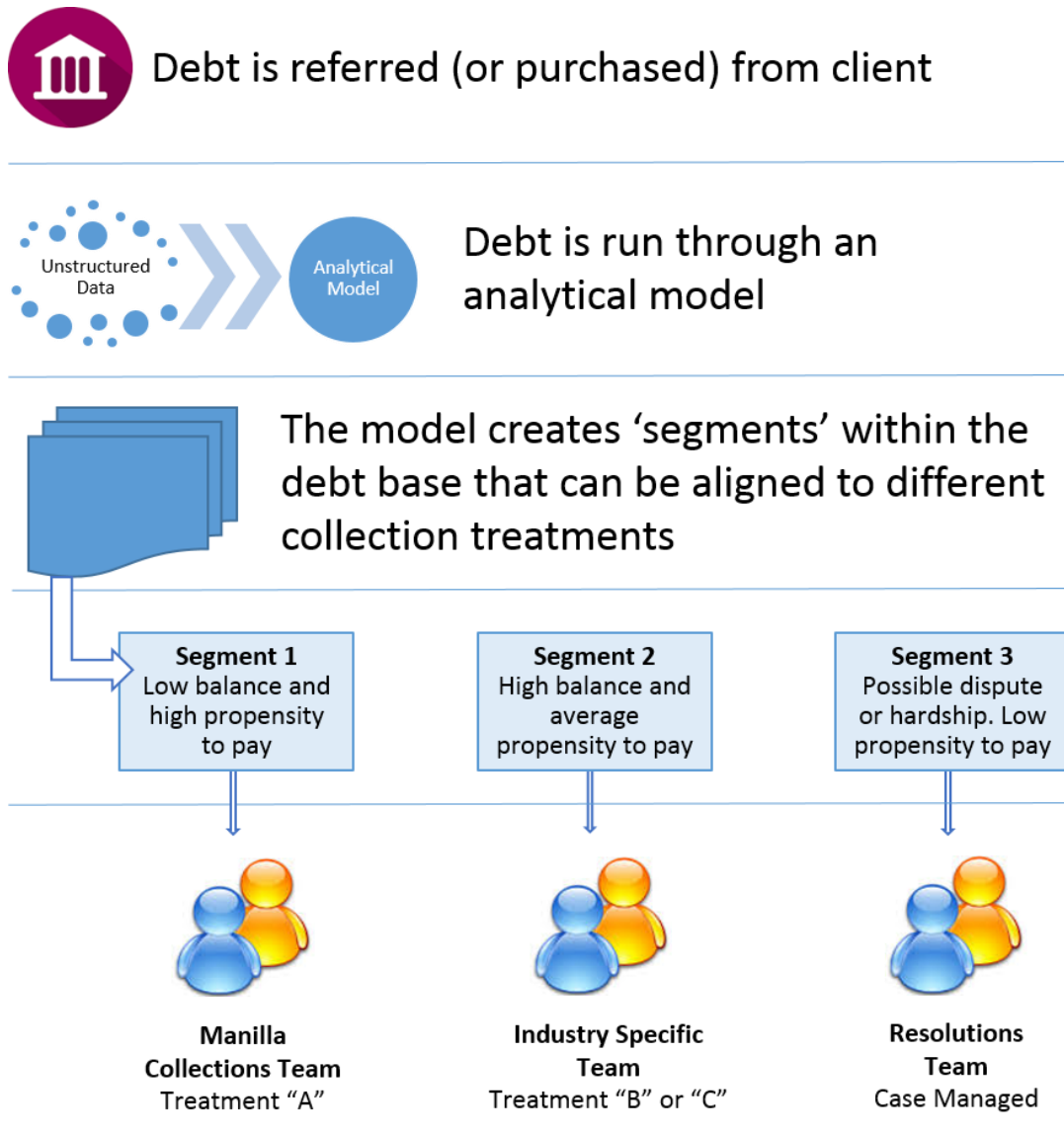
Most of the larger debt collection businesses will utilise an analytical approach to manage debt. This means analysing the debt at the point of referral or sale, and determining the most effective collections strategy for different segments within the debt base.

The degree to which analytics are applied is dependent on individual businesses and the level of investment made in developing the capability. Some may use very basic profiling (demographic data) to determine what collections treatment will be applied, while the larger and more sophisticated businesses will deploy advanced statistical or behavioural models to determine the most appropriate strategy.

Model development will incorporate the use and analysis of multiple information sources, including origination data, behavioural data (both internal and external), previous experience and credit bureau data. Some businesses also use correlation data (like for like) to predict outcomes and align collection treatments.

The graphic below provides a simple illustration of how an analytical model might be deployed within a multi-faceted, high volume call centre environment.

Figure 1: Debt segmentation and treatment example



The graphic demonstrates how this concept might work in a practical sense, with debts being sent to different operational areas based on profile. In much the same way, analytics can also determine the sequence and frequency of available debt recovery activities.

Based on interviews conducted for this review, larger businesses suggest that the use of analytics to drive treatment strategies results in positive outcomes for consumers. This is because it allows those businesses to ask the right questions, using the right resources, at the right time. By aligning the process to the anticipated need, they seek to achieve a one-touch experience, which is preferred by the consumer.

Collection treatments and strategies deployed by individual businesses will also be determined by the extent of their operational capabilities. Given the somewhat limited range of actions available to debt collectors, the following collection activities are generally favoured by industry:

- Debt collection letters
- Phone calls
- SMS messages
- Email
- Self-Serve Portals
- Field calls
- Locations/Tracing
- Solicitor letters
- Legal proceedings

Even with the best models, there will be occasions where a debt is not matched to the optimal collections strategy. This generally occurs where data quality is poor or limited. In such cases, there will be a greater reliance on a conversation with the consumer to determine their circumstances and an appropriate collections approach.

Smaller businesses that do not use profiling will generally manage debt on a case-by-case basis, which means working each debt in sequence and applying the same initial collections process. Given that smaller businesses will generally operate off a significantly lower volume of debt, the lack of an analytical process may not be detrimental in terms of recovery performance, but it does mean there will be a limited differentiation in terms of collections approach. This issue is explored further in the Industry Divergence section of this report.

Use of Litigation within the Debt Recovery Process

Litigation is generally only commenced when all other recovery efforts have been exhausted. Even then, the use of litigation is generally limited to matters where recovery of the debt is likely, and the amount will outweigh any costs. This is because there can be significant costs associated with litigation, and there is no guarantee the action will be successful. As such, use of legal action as a recovery strategy varies significantly across the debt collection sector, with a number of different models being used by both industry and credit providers.

In recent years, there has been a trend for larger debt collection businesses to develop and maintain their own legal capability using a structure known as an Incorporated Legal Practice (ILP). An ILP is effectively a corporation (as defined by the *Corporations Act 2001*) which engages in legal practice (and whether or not it also provides services that are not legal services).

Incorporation became an option for law firms in NSW after the introduction of the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000* in July 2001. Soon after, similar legislation was passed in Victoria, Queensland and Western Australia.²⁶

There are a number of obligations relating to the operation of an ILP, and although they may vary by state, crucially an ILP must have at least one director who is a legal practitioner. Maintaining appropriate management systems, self-assessment audits and director's duties are some of the other requirements.

Both ILPs and external firms conducting debt collection work are subject to additional regulation. These regulations are administered by the state agencies responsible for regulating the behaviour of lawyers and commonly include sanctions for professional misconduct and unprofessional conduct.

One insight provided by ILPs operating in the debt purchase segment relates to commerciality. It was suggested that the costs associated with litigation (time, filing fees and service) meant there was no incentive to proceed if there was little chance of recovering the debt. As a result, significant effort went into profiling capacity to repay.

In support of this perspective, one large debt purchaser stated that less than 1% of their debt matters were referred for litigation, and of those, there was a 100% recovery of both debt and costs, strongly suggesting capacity had been accurately established prior to the action commencing.

By contrast, consumer advocates have suggested that such practices are not applied across all businesses, noting it is common for threats of litigation to be

²⁶ NSW Law Society: <https://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/practicestructures/index.htm>

made where debts are of a low value. Car park fines and video fines were cited as typical examples.

From a legal recovery perspective, the contingent debt collection market operates differently. Any decision to take legal action needs to be approved by each client, who will generally be liable for any costs associated with the issue of legal proceedings. Additionally, a significant portion of litigation undertaken in the contingent space is in relation to commercial debt. This is because commercial debt is generally higher in value and more prone to dispute.

There is also a significant amount of debt collection litigation undertaken outside of the industry itself. Many businesses prefer to have a direct relationship with a law firm, and avoid the use of debt collectors entirely.²⁷ This is becoming more common as law firms look to offer a more diverse range of services, of which a commercial litigation or debt collection service may be one component.

Another feature of debt recovery litigation relates to process. There are very specific rules around process and procedure when initiating legal action, and subsequently, minimal ability to deviate from the prescribed path. This has benefits from a compliance perspective, and is evidenced by the low number of complaints recorded against the law firms surveyed (15 from a total of 17,481 open files).

In contrast, the Legal Services Commission in Victoria reported that it received 58 complaints about debt collection in FY14,²⁸ which represented 3% of total complaints. It is not clear how many of these complaints relate to debt collection law firms, as opposed to creditors commencing debt recovery litigation in their own right.

While there have been some recent actions commenced against law firms acting in a debt collection capacity, industry has suggested these appear to be driven by the practices of individual operators, and are not reflective of the sector as a whole. However, it seems clear that where such practices continue, they will be taken seriously by regulators and met with an enforcement response where appropriate.

²⁷ Anteris DCIR Interviews 2014

²⁸ Legal Services Commissioner Victoria Annual Report FY13/14

Operating Structures

Larger debt collection firms are organised around standard corporate structures, with separate functions allocated to different aspects of the work: sales and marketing, human resources, finance and technology. In most cases there is also a separate function known as operations, which effectively manages all of the contact processes with consumers. The majority of collections staff will be employed in an operations capacity.

For many businesses, operations will be responsible for quality assurance, call audit, call scheduling, debt treatment and collections strategy, and in some cases training and development. This is the core function for most debt collection businesses.

The majority of staff employed by debt collection businesses will be collectors. If a debt collection business employed 300 FTE, then upwards of 70% will likely be collectors initiating or receiving telephone calls. For this reason, a significant amount of effort goes into organising and managing collector activity.

Most collection teams will operate in either industry specific groups (such as telecommunications, utility or finance), or be aligned to different collection functions, such as a hardship team, dispute resolutions team, instalment management team or complex debt team.

Front line collectors operating in a dialler environment will generally report to a team leader, who will assist with escalated calls, product queries and ensure work processes are compliant and consistent. Most businesses operate with between 10 and 15 collectors to 1 team leader.

Remuneration and Incentives

The majority of debt collection businesses interviewed or surveyed for the research indicated they paid current market rate (or above) for collectors and team leaders. The base salary offered to a collector varied depending on experience, but in most cases ranged from \$35,000 to \$50,000. The range for team leaders was from \$50,000 to \$70,000.

Performance incentives were offered by 73% of the debt collection businesses surveyed. In most cases, incentives comprised both financial and non-financial rewards. Financial incentives were generally capped, and on average most collectors were provided the opportunity to earn an additional \$600 per month upon achievement of set targets. Non-financial rewards included gift vouchers, experience based rewards, movie tickets, team dinners and time in lieu.

Targets were generally set across a range of metrics, with recovery performance the most obvious. In the majority of cases, incentives also require meeting compliance metrics, such as complaint numbers or call quality assessments. If

these were not achieved any payment would be restricted, regardless of the collection performance outcome.

However, 35% of respondents indicated that incentive payments were not linked to quality metrics. Such an approach is questionable from a best practice perspective, given that collectors in pursuit of an incentive payment may adopt firmer tactics when negotiating with consumers.

Compliance

The larger businesses interviewed or surveyed provided comprehensive descriptions of their compliance environments. They also had a strong awareness of the ACCC/ASIC Debt Collection Guideline. In reviewing survey data, it is clear that all levels of industry are heavily reliant on the guideline to interpret the ACL in a practical way. In this sense, the debt collection guidelines have been a highly successful regulator initiative.

Larger businesses also noted that technology plays a critical role in enforcing compliance. Collection systems can be programmed to ensure treatment paths do not breach guidelines, including the number of contacts made per week or month, or the time contacts are made.

Businesses operating call centre environments have the additional benefit of telephony based technology, which allows for calls to be recorded and monitored. This is particularly useful where complaints relate to collector conduct, as the call can be reviewed and assessed for potential issues. A number of retailers stated they regularly listen to calls as part of their contract management process.

For most businesses, dedicated training and quality assessment teams ensure compliance. Quality assurance teams regularly undertake call audits and provide feedback to collectors in 1:1 coaching sessions. Many businesses also score quality metrics, and use these as criteria when assessing performance.

The Institute of Mercantile Agents (IMA), whose members are largely smaller operators, also pointed to a number of compliance improvements made by the smaller businesses in the industry. These include the adoption of the ACCC/ASIC Debt Collection Guideline, the introduction of EDR for debt purchasers, improved contractual arrangements between creditors and debt collectors, and a concerted effort by the IMA to educate and keep members aware of their compliance obligations.²⁹

²⁹ Anteris DCIR Interviews 2014

The IMA has also suggested that smaller businesses benefit from higher staff retention rates, which results in increased knowledge and experience. These are important aspects in improving compliance and developing a business culture where compliance is seen as paramount.

On average, businesses surveyed suggested they would spend 53 hours on induction training before a collector would contact a consumer. Once a collector had completed induction, they received (on average) 5.3 hours ongoing training each month. Preferred methods of training were classroom based, or 1:1 with a team leader or manager. Online and customer specific training were cited as a preferred approach.

Hardship

Consumer hardship is a key area of focus for advocates and regulators. While most consumer facing industries will be exposed to consumers suffering hardship in some form, the energy sector has attracted significant attention. This is mainly due to the nature of supply (an essential service) and increases in prices over recent years.

Responsibility for the retail energy sector began transitioning from state and territory governments to the Australian Energy Regulator (AER) under the National Energy Customer Framework (Customer Framework) from 1 July 2012. The Customer Framework includes the National Energy Retail Law, National Energy Retail Rules and National Energy Retail Regulations. Together, these laws set out key protections and obligations for energy customers and the businesses they buy their energy from.

Under the National Energy Retail Law, energy retailers must develop, implement and maintain a customer hardship policy.³⁰ The purpose of the policy is to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.³¹ There are minimum requirements for a retailer's hardship policy. All retailers must have their hardship policy approved by the AER before they can sell energy to residential customers.

Energy retailers interviewed or surveyed said they maintain comprehensive and effective programs to manage hardship. Methods for identification of hardship included analysis of payment trends, constitution of payment arrangements, analysis of payment defaults, and customer self-identification. It was noted that in many cases the establishment of hardship will require a conversation with a customer, which could be challenging, because some customers will be reluctant to engage.

³⁰ s. 43(2) National Energy Retail Law

³¹ s. 43(1) National Energy Retail Law

Industry ombudsmen have supported this argument, saying many of the matters referred to EDR are due to a breakdown in communication, and acknowledge the consumer may not always contact the retailer. Ombudsmen also note efforts within the sector to change the approach, with greater emphasis placed on earlier intervention and better identification of hardship. They suggest that retailers and industry need to be aware of the indicators of hardship, including broken payment plans, multiple disconnection notices, and previous disconnection.

Financial counsellors are concerned that consumers suffering hardship are being referred to external debt collection businesses, when these issues should have been resolved by the retailer. The following is a case study from the Energy and Water Ombudsman Victoria (EWOV) that highlights how the transactional nature of debt collection impacts consumers facing hardship:

Hardship Case Study A - A customer experiencing financial hardship contacts EWOV after being credit default-listed by his electricity company

The customer was unhappy because his electricity company had commenced debt collection proceedings against him, as well as being credit default-listed. He had been experiencing financial hardship and had advised his electricity company about this. As a result the company had agreed for him to pay his arrears with two payment extensions. However, after being unable to meet the extended payment deadlines, the customer's debt of \$494.27 was referred to a debt collection agency.

The customer attempted to organise a payment plan with the debt collection agency, but given his payment difficulties the agency transferred the debt back to the electricity company. The customer then attempted to organise another payment plan with his electricity company, however it would not accept the customer's offer and re-referred the customer to another debt collection agency.³²

Most financial counsellors noted genuine improvements by some businesses in the sector, but retained concerns about the inconsistency in approach and attitudes to negotiation. Financial counsellors also suggested that debt collectors could be more respectful in the way they dealt with clients experiencing hardship. There was a view that debt collectors who maintained dedicated contact lines for financial counsellors represented best practice for industry.

When asked how well debt collectors managed hardship, 66% of financial counsellors indicated that the approach was inconsistent, and largely dependent on the business they were dealing with. 17% felt that debt collectors were

³² <https://www.ewov.com.au/publications-and-media/archive/2015/february-2014/a-customer-experiencing-financial-hardship-contacts-ewov-after-being-credit-default-listed-by-his-electricity-company>

generally unwilling to negotiate a suitable arrangement, while 17% also considered that debt collectors were willing to negotiate a suitable arrangement.

The ACDBA notes an industry initiative to assist consumers facing long term and severe hardship. In partnership with Financial Counselling Australia (FCA), the ACDBA is piloting the use of a National Hardship Register (NHR), whereby any consumer listed on the register is afforded a moratorium on debt collection activity, with an eventual waiver if there has been no change in circumstances after three years.

Consumer advocates are generally supportive of the NHR and consider it a positive initiative, but have stated their preference to see debts waived up front, and point to the 2011 Bulk Debt Negotiation Project³³ as providing a best practice model for management of long term hardship.

The effective and consistent management of hardship appears to have its challenges. Failure to identify hardship creates downstream issues, such as hardship cases referred for debt collection, or sold to a debt purchaser. From a best practice perspective, every hardship case would be identified and effectively managed within the retailer environment. However, this does not currently occur in practice.

Consumer advocates have questioned whether this is evidence of systemic issues, while retailers claim that they maintain effective processes to identify and manage hardship cases, particularly given the challenges of operating in a highly transactional environment.

Both the retailers and advocates agree that the identification of hardship is an important issue. There appears to be genuine efficiency benefits for retailers in identifying and addressing hardship issues at an early stage. Effective measures would also increase the value of debt sold to collectors, who are likely to be willing to pay a premium for debt bundles that excluded hardship cases.

³³ <http://www.financialcounsellingaustralia.org.au/getattachment/Corporate/Publications/Reports/Bulk-Debt-Negotiation-Project-Client-Profiles-and-Project-Outcomes.pdf>

Complaint Management

Types of complaints

The process for making a complaint depends on the nature of the complaint itself. Broadly, complaints can be put into one of two categories: *conduct related*, where there has been a poor engagement with the consumer, and potentially a breach of the ASIC/ACCC Debt Collection Guideline or the ACL; or *debt related*, which relates to whether the debt is owed.

Debt related issues can occur as a result of issues in the customer set up and billing process, or due to a dispute over quantum or liability, whether or not the retailer was aware of this dispute. While debt related complaints are far more prevalent than conduct issues, conduct related complaints tend to be more serious in nature, as they are more likely to involve a breach of the law.

Internal Dispute Resolution

In terms of complaint management, both debt collection businesses and credit providers generally maintain formal Internal Dispute Resolution processes (IDR). Consumers are encouraged to use IDR to initiate a complaint (noting this could be for both conduct and debt related matters), and most IDR's will specify a timeframe for resolution, at which point the consumer is informed of the decision.

External Dispute Resolution

Where a consumer is not satisfied with the outcome, they have additional recourse if the credit provider or debt collector is a member of an EDR scheme. These are industry-sponsored ombudsman schemes which handle complaints for specific services including banking, employment, utilities (such as electricity and water), health insurance, public transport, superannuation, and telecommunications.

However, there are gaps, as not every industry is represented by an EDR scheme. In such cases, consumers also have the option to refer a complaint to state or territory ACL regulators, who may conciliate disputes as well as take compliance or enforcement action. Carriage of matters is therefore dependant on the type of complaint being made. As a general rule, complaints to ACL regulators will be referred to an appropriate EDR scheme to assist the consumer resolve the dispute.

Debt purchasers are required to be a member of an EDR scheme as a requirement of holding an Australian Credit Licence, and most are members of the Credit and Investments Ombudsman scheme (CIO). The CIO has the power to investigate matters relating to credit regulated debt, and where a debt purchaser is involved, any issues relating to conduct or privacy. However, debt purchasers have unanimously stated they apply the Australian Credit Licence obligations across all debt, both credit regulated and non-credit regulated.

This means that if a debt purchaser bought debt from a telecommunications provider, and a complaint was made that was not conduct or privacy related, such as a billing dispute, the CIO would be required to refer the matter to an alternate EDR scheme, in this example the Telecommunication Industry Ombudsman (TIO). A separate issue then arises, being that debt purchasers are not members of the TIO, and so the TIO can only look at the issue from the aspect of the retailer's involvement. While not perfect, this is ultimately the right process, as there is no conduct related issue, and the TIO can resolve the billing dispute.

Retailer/Credit Provider Responsibility

Contingent debt collectors are not required to be a member of any EDR scheme, because they are acting as an agent of the principal (the credit provider/retailer). This means that for contingent collectors, any complaint (either debt or conduct related) will be referred back to the credit provider in the first instance, as they retain accountability for both debt and conduct. The degree to which every credit provider applies this requirement is unknown, however the ACCC/ASIC debt collection guideline is very clear:

When a creditor uses an agent for collection, the creditor (as principal) will generally be liable for their agent's conduct when that conduct comes within the agent's express, implied or ostensible authority.

A creditor may be responsible for their agent's collection activities even if the agent acts in a way that is contrary to an agreement or understanding between the creditor and agent about how the collection is to be undertaken. 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.

The ACCC and ASIC encourage creditors to use this guideline to ensure their in-house collection activities are compliant with the Commonwealth consumer protection laws and to incorporate this guideline into their contractual and compliance auditing arrangements with their agents and assignees.³⁴

The larger credit providers and retailers surveyed or interviewed for this review all stated they utilise robust contract mechanisms providing for significant operational oversight in managing their relationship with debt collectors. These include provisions for individual file auditing, reporting of quality metrics and complaint data, and performance from an overall recovery and compliance perspective.

³⁴ ASIC/ACCC Debt Collection Guideline (Part 1)

Potential under-reporting of debt collection complaints

Consumer advocates have suggested that the number of formal complaints made against a business or industry is not always a good proxy for consumer dissatisfaction or detriment, particularly where consumers are disadvantaged or vulnerable. In 2006, CAV reported that approximately 4% of revealed consumer detriment is reported to CAV and smaller percentages are reported to other agencies, such as ombudsman.³⁵

Advocates suggest there are many reasons for this, but the primary cause is that consumers are unaware of their rights and protections under the law. Even if they are aware of their rights, they do not know where to go for help or that free or affordable help exists.

Similarly, the research conducted in relation to the CAV 2011 Debt Collection Harmonisation options paper found that large numbers of people who disagreed with the debts they were contacted about did not seek help.³⁶

³⁵ Consumer detriment in Victoria: a survey of its nature, costs and implications Research Paper No. 10, Oct 2006

³⁶ CAV Debt collection harmonisation regulation Options paper, October 2011

Complaint Analysis

While the number of complaints made in relation to a particular industry cannot be wholly relied upon as the primary measure of the extent of problems or non-compliance, it is an important indicator used by regulators to detect potential issues in an industry and to inform compliance activities. Where complaints indicate systemic non-compliance regulators such as the ACCC will take steps to address issues. Similarly, even where complaint numbers on the whole are low, complaints that indicate significant or widespread consumer harm or that impact vulnerable or disadvantaged consumers may be considered for further action by regulators.

The following sections provide information regarding debt collection contacts and complaints to various regulators and EDR schemes. When a consumer approaches a regulator seeking advice it is generally considered a 'contact'. Depending on the issues raised it may be lodged as a complaint. Regulators and EDR schemes may use different methods of classifying and reporting data, therefore comparisons need to be drawn carefully.

The following pages include data from the ACCC and EDR schemes. It should be noted that data was not requested from every EDR scheme, and as such, the data set is not exhaustive.

Complaints to the ACCC

Table 4: Overview of ACCC Debt Collection Complaints (FY13 and FY14)

Year	Contacts about debt collection	Complaints about Debt Collectors
FY 2014	1,058	581
FY 2013	867	450

Given the broad remit and its strong visibility, the ACCC is often the first point of contact for consumers wishing to make a complaint. As such, the ACCC fields a substantial number of contacts every year, over 160,000 in the 2013-14 financial year. The ACCC actively monitors complaint data to identify potential issues with individual traders or problematic behaviours emerging in different markets.

The ACCC assesses complaints in accordance with its Compliance and Enforcement Policy.³⁷ The ACCC cannot pursue all of the complaints it receives about the conduct of traders or businesses. While all complaints are carefully

³⁷ www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy

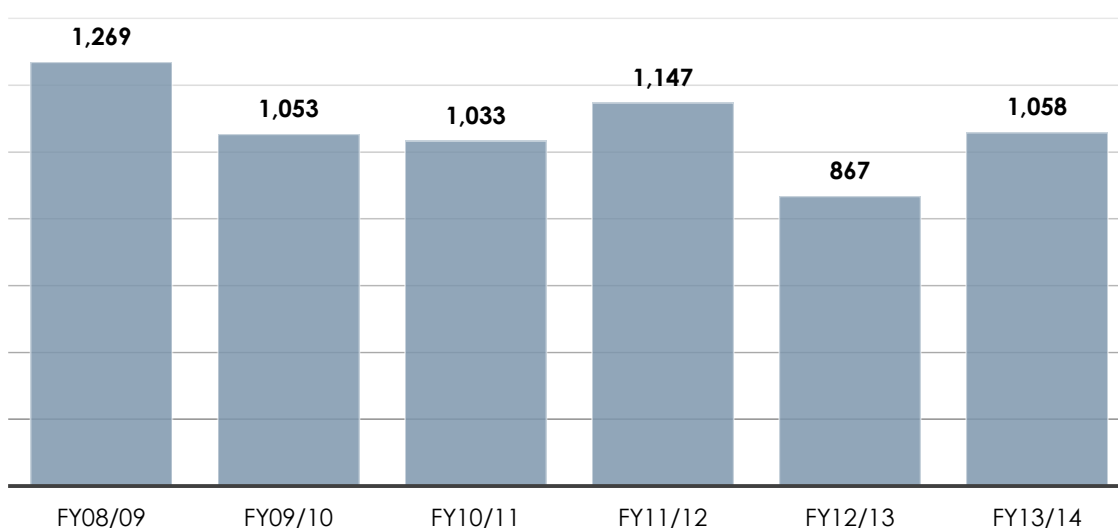
considered, the ACCC's role is to focus on those circumstances that will, or have the potential to, result in widespread detriment to consumers or competing businesses.

The ACCC therefore exercises its discretion to direct resources to the investigation and resolution of matters that provide the greatest overall benefit for competition and consumers. When reviewing complaints about debt collection, the ACCC uses the same classification to record matters relating to both original creditors and debt collectors. Contact and complaints relating to broader debt collection matters are displayed, as well as complaints that specifically relate to debt collection businesses.

Many of the complaints received were in relation to the debt itself, rather than the conduct of the debt collector. In these matters, the consumer is generally provided the details of the appropriate EDR scheme or ACL Regulator to assist in resolving the matter. Complaints relating to conduct issues in relation to credit debt are the responsibility of ASIC, and are referred as such.

The following graph provides a historical trend of contacts made to the ACCC relating to debt collection. This includes matters relating to both debt collection businesses, and original creditors. As seen, the level of complaints has been relatively constant over the last six years, although there was a significant decline in FY12/13. While speculative, FY12/13 was notable in terms of regulator enforcement activity. It is possible that the well-publicised nature of such activity caused debt collection businesses to modify their collections approach, resulting in a decline in complaints.

Graph 4: ACCC Contacts Trend

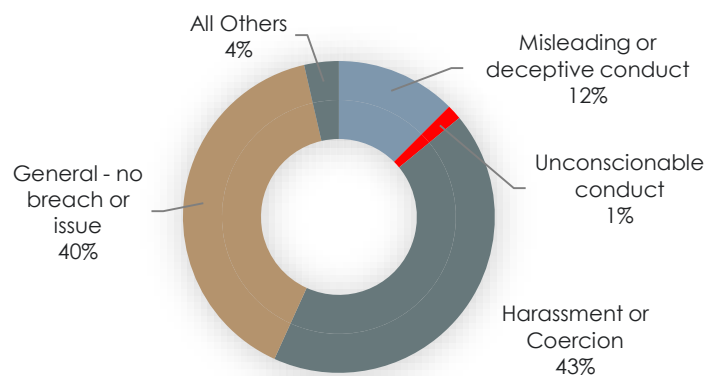


As many businesses collect both credit and non-credit debt, there is frequent communication between ASIC and the ACCC in relation to debt collector issues. As such, enforcement action is often coordinated between the two agencies.

When reviewing ACCC data relating specifically to debt collection businesses, it was noted there were 581 complaints recorded in FY13/14, which was an increase of 29.7% over the prior financial year. Over the two year period there was a total of 1,031 complaints generated from 106 unique debt collection businesses.

As seen from the graph below, the most common type of complaint category was *Harassment or Coercion*, followed by *General – no breach or issue*. *General – no breach or issue* is where there is no indication that the conduct in the complaint may have breached the ACL. *Misleading or deceptive conduct* is the third highest complaint category, and significant given the nature of such complaints. *All others* includes proof of transaction, false representation, scams, and guarantees.

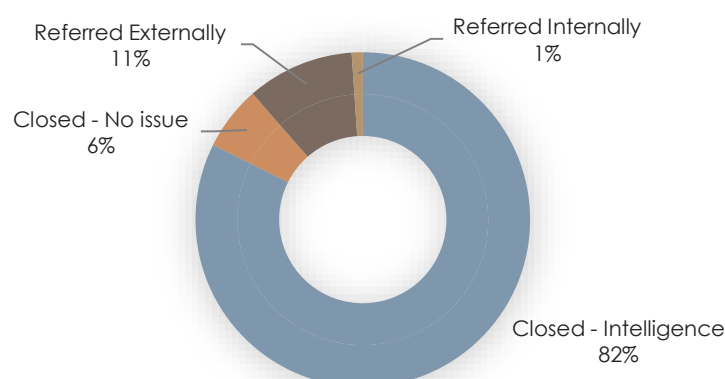
GRAPH 5: ACCC Complaint Classification



An analysis of closure reasons shows that over 80% of debt collection complaints are closed as 'Intelligence'. This means the ACCC retains the complaint details for monitoring purposes. Many of these cases are disputes about the debt itself and do not allege any breach of the law.

In these circumstances, the consumer is advised to contact an EDR scheme or state ACL regulator to resolve their individual matter. 'Referred externally' is used where the ACCC has directly referred the matter to another agency for action, this could be ASIC or another ACL regulator.

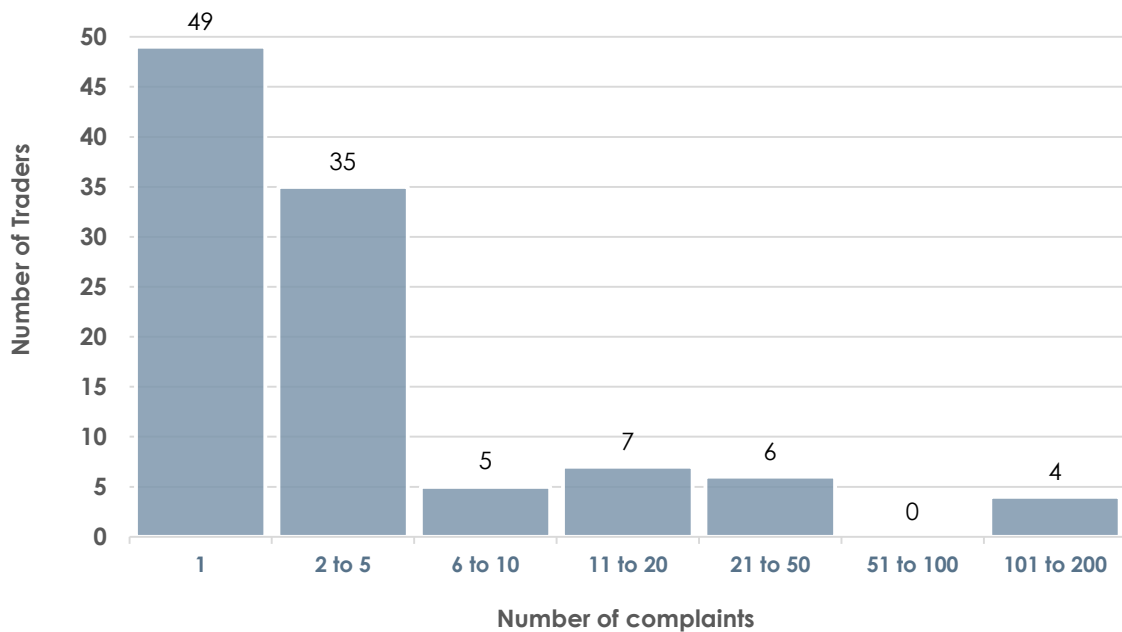
GRAPH 6: ACCC Complaint Outcomes



This following chart provides a breakdown of ACCC complaints made against debt collection businesses. Between July 2012 and June 2014, a total of 106 individual traders had one or more complaints recorded against them:

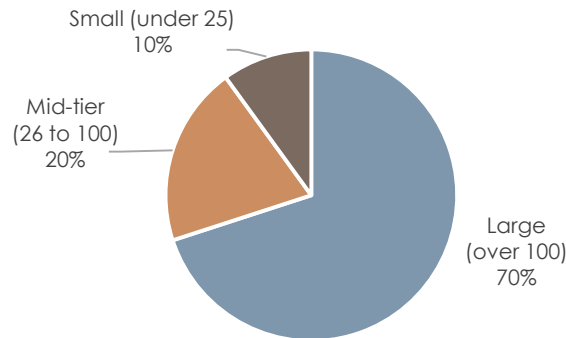
- 49 businesses received only one complaint
- 84 businesses received five complaints or less - these 84 businesses made up only 15.7% of the complaints
- The 22 businesses that received more than 5 complaints each made up 84.3% of the debt collection complaints
- The four traders that received over 100 complaints each made up 48.6% of total debt collection complaints received
- These four traders were among the largest businesses in the industry. Unsurprisingly, there appears to be causal relationship between the level of debt collection activity and the number of complaints.

GRAPH 7: ACCC Complaint Distribution by Trader



When analysing the ten businesses that attracted the highest number of complaints, seven are larger businesses (most have over 300 employees). Two were medium sized businesses and one was a small business.

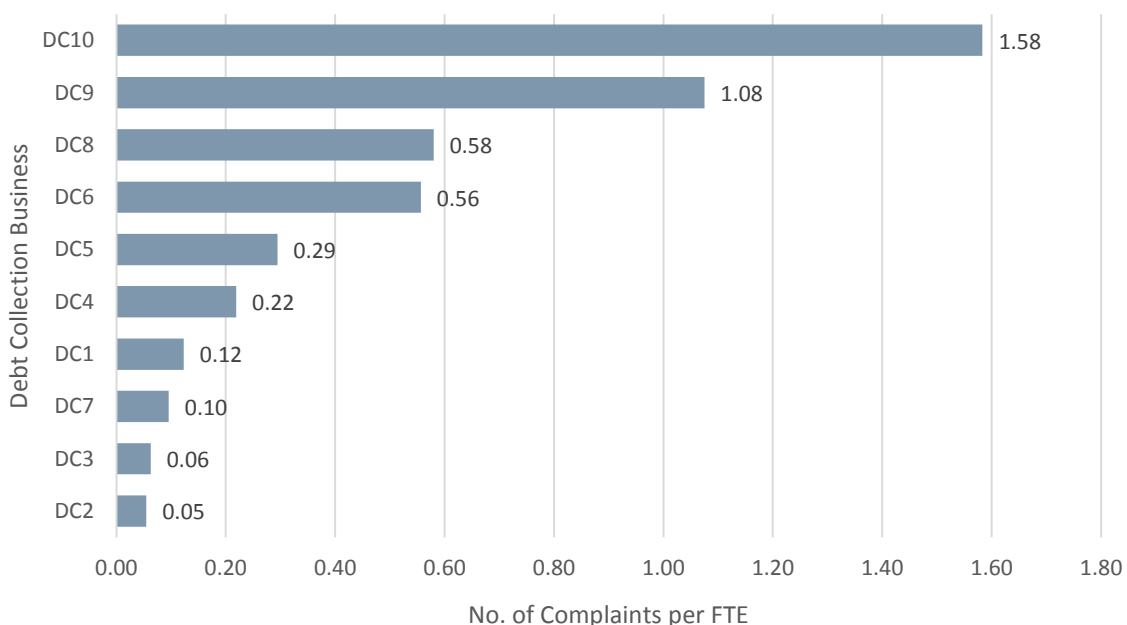
GRAPH 8: Complaints by Size of Business (number of employees)



In the following graph, the top ten most complained about debt collection businesses have been assigned an identity based on the number of employees. DC1 has the greatest number of employees, and DC10 has the least. The Y-axis shows the number of complaints the business received per full time employee. As can be seen, the smallest business (DC10) attracted 1.58 complaints per employee, while the largest business (DC1) attracted 0.12 complaints per employee. The second largest business (DC2) attracted the least number of complaints, at 0.05 per employee.

There is a strong proportional correlation between the size of business and number of complaints per employee. While larger businesses generate more complaints in terms of raw numbers, on a per employee basis, they are less likely to generate a complaint as compared to smaller or medium sized businesses.

GRAPH 9: Complaints per FTE



It was also noted that two of the three small and medium sized businesses that were in the top ten most complained about businesses, were operating in sectors identified by regulators as areas of concern, such as car parking and video fines. While business size is clearly a factor in debt collection complaints, the type of debt being collected can also contribute to high complaint levels.

Complaints to state and territory ACL regulators

While a breakdown of complaints to the state ACL regulators is not included, the regulators interviewed for this report generally acknowledged that complaints about debt collection are statistically low, and stated that they continue to closely monitor activity in the sector.

With increased awareness and availability of EDR schemes, some states have reported a general decrease in debt collection complaints. State regulators, particularly in NSW and VIC have reported a decrease in complaints while noting that at the same time complaints to the respective energy and water ombudsman increased. For example, consumers enquiring (prior to making a complaint) to a state ACL regulator about debt collection practices relating to a credit regulated debt may be referred to ASIC or the CIO. Consumers disputing the nature of the debt may be referred to an industry ombudsman such as the TIO or the relevant energy and water ombudsman.

Where complaints are not suitably addressed by an EDR scheme, the state and territory regulators may offer a conciliation service to assist consumers resolve their disputes with the business.

While the trending down of complaint numbers to some state regulators has seen debt collection removed as an immediate enforcement priority, it was noted this could quickly change should any significant issues arise within the industry.

Complaints to EDR schemes

Table 5: Selected EDR Scheme Complaint Analysis³⁸

EDR	Responsibility	FY13	FY14	% Change
Credit and Investments Ombudsman (CIO)	Complaints relating to credit regulated matters, including debt purchase, privacy and collector conduct.	1,292	1,954	↑51%
Financial Ombudsman Service (FOS)	Complaints relating to credit regulated matters, including debt purchase, privacy and collector conduct.	279	237	↓15%
Telecommunications Industry Ombudsman (TIO)	Issues in new complaints relating to telecommunications service providers, which have a debt recovery aspect.	6,494	5,921	↓9%
Energy and Water Ombudsman Victoria (EWOV)	Complaints made about Energy Retailers in Victoria (Debt Collection category).	3,664	5,925	↑62%
Energy and Water Ombudsman NSW (EWON)	Complaints made about Energy Retailers in NSW (Debt Collection category).	7,610	9,720	↑28%
Legal Services Commissioner Victoria (LSC VIC)	Complaints made relating to the conduct of Law Firms in Victoria (Debt Collection category).	78	58	↓26%

Complaint data from selected EDR schemes has been included for comparison purposes. Excepting CIO and FOS, most complaints lodged with EDR schemes primarily relate to different aspects of a customer's dealings with retailers.

CIO and FOS both have debt purchasers as members. Therefore, any complaints about credit regulated debt involving a debt purchaser will be managed via one of these two schemes.

Data from the energy and telecommunications ombudsman schemes derives from total complaint numbers using the collections category code. These disputes relate at least partly to debt collection or credit default. While a debt collector may be involved, the categorisation does not distinguish between a retailer's internal collections team and a debt collection business operating on behalf of a retailer.

³⁸ FY14 Data represents the Financial Year July 2013 to June 2014. Trend data looks at the preceding 12 month period. All data sourced from relevant EDR Annual Reports unless stated otherwise.

As seen in the preceding table, complaints about collection issues in the energy sector are on the rise, with disconnection and arrears being prominent issues. One ombudsman noted the main driver for the increase in credit cases was a greater focus by energy retailers on recovering aged debt and resolving long-term issues of poor payment history or non-payment of bills.³⁹

Telecommunications complaints have decreased, with simplified plans and proactive usage monitoring tools widely held as driving the improvement. From a raw numbers perspective, complaints to the CIO continue to climb, although it is noted that a significant portion of the increase has been driven by the activities of credit repairers as well as a number of credit purchasers moving from FOS to the CIO.

³⁹ EWOV Annual Report 2014: Credit Issues, p23

PROBLEMATIC MARKETS, STRUCTURES AND BEST PRACTICE OBSERVATIONS

This section examines a number of industry related concerns raised during the course of the review. It begins with examples of concerning debt collection conduct from a consumer perspective. It then examines various sectors where debt collection plays a role (financial services, energy, telecommunications, education, healthcare, government) including the problems and best practices in these sectors. It also looks at a number of additional issues such as credit repair, the role of EDR schemes, industry divergence and licensing and regulation.

Additional Fees

Consumer advocates report that it is common for some debt collectors to impose additional fees and charges on outstanding debts. Debt collection solicitors and mid-sized debt collection agencies that have integrated legal practices reportedly impose fees. These fees generally exacerbate consumers' existing incapacity to pay.

Debt collection firms may sometimes claim that there are standard terms and conditions that allow for recovery of costs associated with debt collection. However, consumer advocates note that these terms are not commonly provided (almost never in letters of demand) and, if they are, they either do not provide for recovery of costs or the relevant term is arguably an unfair contract term under the ACL, and therefore void.

The Consumer Action Law Centre (CALC) provided the following case studies which highlight some of the issues associated with additional fees:

Case Study A: Collection of a disputed repair fee

Client A had an air conditioner repaired under warranty, but a fee of \$140 was charged for travel. Client A disputed this and did not pay it on the basis that she should not pay for travel costs associated with warranty repairs. Client A received a number of letters of demand from a debt collection agency. The amounts demanded each had additional fees – firstly the amount demanded was \$292, then it was \$700 and then it was \$1350. It appeared that at each stage a 40% administration fee was imposed, but it did not specify on what basis. Client A's most recent letter was from the lawyer associated with the debt collection agency that requested \$250 of legal fees. No legal action had been initiated.

Case Study B: Collection of medical bill

Client B visited a doctor for a medical consultation, the cost of which was \$190. Client B was not immediately invoiced. When an invoice was sent, it was sent to an old address and so it went unpaid. Later, a debt collection agency wrote to Client B seeking almost \$390, which included the original debt, \$70 commission and \$130 of 'legal costs'. The letter did not indicate on what basis these additional costs were payable. There did not appear to be any initial terms which provided for recovery of these fees.

Case Study C: Collection of education fees

Client C was an international student who had enrolled to study a private vocational college. Client C paid upfront fees of around \$4,000 but not long after enrolling, he sought a deferral due to illness. The deferral was granted but some months later he decided to withdraw entirely as he could not continue. Some months later again he was contacted by the collections office from the College demanding payment of \$2,875 to be paid within 2 days otherwise the matter would be handed over to external debt collection agents. Client C says the officer verbally threatened him including that there would be implications for the client's Visa. Client C was unable to pay and subsequently received demand for payment of \$3,780 from the external debt collection firm. No basis was provided for the increase in the amount demanded.

Consumer advocates note that the imposition of unsubstantiated fees will be a growing issue, particularly with media reports about the potential for 'speculative invoicing' relating to demands alleging breach of copyright via downloaded content.

Misleading Threats

Consumer advocates have reported that they commonly receive complaints about threats to litigate for very small amounts or threats to list debts on credit files where there seems no basis for the claims. Consumer advocates consider that this conduct is misleading and is used to obtain payment where there is no real basis for the claim.

CALC provided the following case study:

Case Study D: Collection of a fee for late video return

Client D received a letter of demand from a debt collection agency in relation to an unpaid video library fine of less than \$100. Additional fees meant the debt had increased to almost \$200. The letter included statements such as "our clients may commence legal proceedings without further notice" and "our instructions are that a credit default may be listed if entitled to do so." The consumer advocate was aware that no video library is a member of a credit reference agency, so the statement appeared to be misleading.

Continued Contact

Where a collector is aware that a consumer is unable to pay a debt, continuing contact is likely to breach the ACCC/ASIC debt collection guideline, which advises:

If you are aware that a debtor is unable to make meaningful and sustainable repayments towards a debt, then continuing to contact the debtor to demand payment will not be reasonable or appropriate. Where that is the case, you should only consider contacting the debtor if you know, or have good reason to think it is likely, that the debtor's financial situation has improved.

In Victoria, section 45(2)(m) of the ACLFTA prohibits debt collectors contacting a debtor after the debtor has requested that the collector cease contact (although they can contact through litigation). Consumer advocates and regulators receive complaints showing that there continues to be non-compliance with this provision. This can result in ongoing harassment by a number of different debt collectors. Following a request to cease contact, the debt is often referred to another debt collector, or sold to a debt purchaser.

CALC provided the following case studies:

Case Study E: Collection of a gym cancellation fees

Client E had a one-year gym membership. The gym contract stipulated that there was a fee if the membership was cancelled in the first year. Client E deferred payments a number of times because of medical reasons and overseas travel. Client E then moved to new location where the gym was not located. She paid about 8 months towards the membership, but around \$118 was owed. Client E could not afford the ongoing payments, so stopped. Client E received a letter from a debt collection firm seeking \$385 including debt collection commission. Client E was contacted by the firm daily. With assistance from an advocate, Client E wrote to the agency stating that the amount claimed was not due under the contract and to cease contact pursuant to the ACLFTA. Client E continues to be contacted daily despite this request.

Case Study F: Collection of a telecommunications debt

Client F an elderly woman whose sole income is Centrelink payments, lives in public housing and has no assets. She was unable to pay a bill to a large telecommunications company, so a financial counsellor wrote to the company alerting it to the fact that her income was protected, and that continued contact would breach the ACLFTA and ACCC/ASIC Debt Collection Guideline. The company then sent a letter of demand. The counsellor sent a letter specifically demanding that the company cease all contact with the client, drawing attention to the relevant section of the ACLFTA which prohibits contact. The company responded by referring the debt to a debt collector. Client F then received a letter of demand from a law firm acting on behalf of a debt collection business. The financial counsellor again pointed out that the income was inalienable and that to continue contact was a breach. Two months later, a different firm sent a letter of demand and the financial counsellor responded. The next month the company again started sending letters of demand.

Debt Purchase and Contingent Collections

While debt collection businesses tend to be grouped together for the purposes of market analysis, as noted previously, there are significant variances in the way different sections of the industry operate. The most substantial of these relates to the issue of control, and the ability of debt purchasers to individually determine the practices they adopt when managing debt.

Because there are also differences in the way market sectors operate, it is useful to consider those factors when appraising the broader issues relating to debt purchase and contingent debt collection businesses. To assist understanding, this section analyses the industry by sector, identifying potential structural issues, and how this impacts industry behaviours, and ultimately, consumers. The key sectors are:

- Financial Services (as a comparison)
- Energy
- Telecommunications
- Education
- Healthcare
- Government

Financial Services Sector

Although not within the scope for this project (as it is regulated by ASIC), a high level analysis of the financial services sector has been included for comparison purposes. In many ways this sector is considered a success story for industry, with the introduction of the NCCP bringing additional regulatory obligations for businesses purchasing credit regulated debt. This includes the requirement for debt purchasers to hold an Australian Credit Licence.

The organisations interviewed or surveyed for the project were unanimous in their view that the Australian Credit Licence obligations have led to greater levels of compliance within industry, and therefore improved outcomes for consumers.

Driving this change was a requirement for all debt purchasers to hold mandatory membership of an External Dispute Resolution (EDR) scheme, which effectively provides recourse for consumers not satisfied with the outcome of a complaint made directly to a debt purchaser.

While it seems that industry initially struggled with the notion of EDR, over time views have matured. Debt purchasers are now working more effectively within the EDR scheme structures, and applying a more commercial approach when balancing the potential for a matter to escalate to EDR, and the costs associated with a consumer lodging a complaint with an EDR scheme. For consumers, this can lead to improved complaint management outcomes.

While there are also a range of other factors, since the introduction of EDR schemes, complaints to ACL regulators about credit regulated debt have reduced. While those regulators note that debt collection issues will always be present, there is a sense that the financial services market sector has benefited from a significant lifting of compliance standards, and represents best practice from an industry perspective.⁴⁰

With regard to debt purchasers, the primary EDR scheme used is the CIO. Feedback from the CIO aligns with regulators and is generally supportive of the progress made by industry within the credit regulated space.⁴¹

However, from a raw numbers perspective complaints to the CIO continue to rise, although it is noted that this increase has been largely driven by the activities of credit repairers, with credit default issues accounting for 31% of all debt collection complaints in FY14, up significantly from 21% in FY13.⁴² Additionally, complaint numbers may also be impacted by debt purchasers transferring between the two relevant EDR schemes (FOS and CIO), with the vast majority of industry having now taken up membership with the CIO.

Setting aside credit repairers, the other key area of complaint relates to hardship, which accounted for 25.4% of total debt collection complaints in FY14. The level of hardship cases presenting to the CIO was considered high given that debt purchasers retain control over the hardship process.

There was also a view that the numbers of complaints to the CIO could be significantly reduced through the introduction of better systems and processes to identify potential hardship cases. In a best practice environment, hardship cases would be resolved by debt purchasers without the need for EDR schemes, or by original creditors prior to being sold.

In general, the industry believed that a strong relationship with ASIC contributes to better compliance outcomes in the industry. ASIC was generally seen to encourage compliance in a consultative and effective manner. The industry also expressed a desire for increased engagement with the ACCC in relation to non-credit regulated debt, citing this as something they believe could be improved.

⁴⁰ Anteris Consulting Interview Summaries

⁴¹ Anteris Consulting Interview Summaries

⁴² CIO Annual Reports: 2013 & 2014

Energy Sector

The energy sector was cited as an emerging area of concern for consumer advocates and regulators. Increasing network costs have seen the price of electricity and gas rise significantly in recent times. In the five years to the June quarter 2012, the Consumer Price Index (CPI) rose at 15%, while retail electricity prices rose by 72%.⁴³

While energy costs as a percentage of income in FY14 rose more moderately (up to around 4%), low income households are generally spending more on energy as a percentage of their income than in 2013.⁴⁴ This may be one reason hardship issues are becoming more prevalent from a debt collection standpoint.

Given current conditions, it was not surprising that the consumer advocates and ombudsmen interviewed cited a number of concerns about the sector. These primarily related to management of hardship and disconnections. (See also the Hardship section on page 45).

In terms of other observations relating to the sector, one retailer suggested that consumer awareness around energy use was low, and better management of consumption was a potential way for customers to deal with increasing costs. This means helping customers to understand how they might be more efficient in their daily energy use and how this contributes to a reduction in energy costs.

Consumer advocates question whether consumers receive sufficient advice from retailers and collectors about the various assistance programs available to them. These schemes can be accessed by those consumers most in need. Assistance may be provided by the retailer or through a range of government programs.

Retailers also noted that unlike the telecommunications sector, there are no widely available pre-payment options within the energy sector, and that in some situations the quarterly billing cycle can contribute to payment issues, because the level of debt they have incurred may surprise customers.

From a good practice standpoint, retailers have suggested that for customers struggling financially, monthly billing would be a preferable option. This would give customers a better understanding of usage, and assist them to manage their commitments. Retailers note that at present, any transition to monthly billing must be approved by the customer.

Advocates have raised a concern relating to retailers' interaction with debt collectors, and a trend to use tiered collections strategies. This is where a debt is referred to multiple contingent collectors before being sold to a debt buyer. This

⁴³ ABS: Household energy use and costs, Sept 2012

⁴⁴ AER: Annual Report on the performance of the retail energy market, 2013/2014

means consumers are being bounced between different debt collectors, creating confusion and concern.

Advocates also note a trend towards debt sale in the energy sector, and suggest this is introducing new market entrants who may not have the same level of sophistication as the larger, more established debt buyers. As such, there is a view that consumers may be experiencing more difficulty with energy debts, as compared to credit regulated debt.

The debt collection industry has acknowledged some of the concerns raised by advocates and ombudsmen, particularly in relation to debt referral or sale. There is a general view by industry that a significant portion of debt giving rise to complaints is driven by billing issues and disputes, or a failure to identify hardship.

Industry contends these issues originate with the retailers, and from a best practice perspective, most say it would be preferable if such cases were not referred to debt collectors in the first instance.⁴⁵

This theme has also been picked up by various energy and water ombudsmen, who consider the downstream impacts of poor process as a key issue for retailers and industry. One example provided was the referral of a hardship case to a contingent collector, who then sent it back to the retailer, and after a period of time it was then sold to a debt purchaser. While the ombudsman did not view this as a deliberate action by the retailer, consumer advocates suggest such examples occur on a frequent basis, and question whether this is caused by systemic process failure.⁴⁶

There was a general acknowledgement that the energy sector has been subject to its share of billing and customer management issues. Retailers have stressed their understanding of the importance of adequate systems and processes to manage customer transactions, but note there will always be challenges and complexities when dealing with multiple systems managing millions of customers.

Consumer advocates have long cited concerns regarding hardship in the energy sector. The Financial and Consumer Rights Council (FCRC) released a report in August 2014, titled *Rank the Energy Retailer*.⁴⁷ The report assessed the financial hardship policies and practices of 13 retailers, with a focus on the big three; Origin, AGL and Energy Australia, who collectively control 70% of the market.

Findings from the report suggested that while the big three were performing better than the smaller retailers, there was still significant room for improvement across the sector, and that communication, internal practices, hardship training and poor attitudes all contributed to a negative experience for customers affected by

⁴⁵ Anteris Consulting Interview Summaries and Debt Collector Survey, 2014

⁴⁶ Anteris Consulting Interview Summaries 2014

⁴⁷ <http://www.fcrc.org.au/fcrc-releases-rank-the-energy-retailer-report/>

hardship. The report concluded that there was a general lack of understanding about the impacts of hardship on customers.

Advocates understand that less than 1% of consumers are on hardship programs, and say this suggests some retailers are only doing the minimum. While hardship programs were considered generally effective when initiated, there was a concern they could be difficult to access.

The introduction and use of smart meters may provide some benefits to consumers who are experiencing financial difficulties or hardship. Smart meters can be read remotely and take meter reads much more regularly (rather than waiting for a quarterly meter read). This enables customers to receive more accurate and frequent bills, which can help consumers with their budgeting (paying lower monthly bills, for example, rather than larger quarterly bills). It also enables customers to monitor and understand their energy consumption more easily. Customers with in-home displays can see their energy consumption on a real-time basis which can help them to understand how efficient their various appliances are and the associated costs.

In a recent review the AER made the following findings in relation to hardship:⁴⁸

- The review suggested many community concerns about hardship assistance and payment plan affordability are linked to broader issues of energy affordability and a lack of consumer awareness about the assistance available to them. The concerns do not indicate widespread failure by the retailers to meet their hardship obligations under the Rules.
- While the review revealed a range of practices, some retailers seem more committed to assisting hardship customers than others. Examples include, better promoting the availability of assistance, staff training to promote more effective engagement, or innovative assistance offerings.
- The strong theme highlighted by consumer stakeholders was the importance of respectful practice. How a retailer engages with the customer to listen and validate their experience of financial vulnerability is important in developing trust and maintaining engagement.

The AER notes they have seen encouraging progress in response to the review, with a number of retailers reviewing their hardship policy and process documentation and considering improvements to the information they provide to consumers experiencing payment difficulties.

⁴⁸ AER review of energy retailers' customer hardship policies and practices 2015

Telecommunications Sector

The telecommunications sector shares many of the same attributes as the energy sector, in particular, its highly transactional nature. At the same time, the telecommunications sector has changed dramatically over the last ten years, as has the way consumers access such services. Technology convergence is driving the use of mobile and wireless devices at record rates, and in new directions.

In its 2014 Annual Report, the Telecommunications Industry Ombudsman (TIO) noted there were around 138,000 complaints lodged, of which about 30,000 had some form of credit management element. This represented a decrease of 6,000 from the 2013 financial year. However, the number of complaints that specifically relate to debt collection has been relatively consistent over the last four years.⁴⁹

Debt collection concerns in the telecommunications sector are again similar to the energy sector. Probably the most common theme is the downstream impact of billing or contract issues, and questions about the degree to which customers really understand what is happening with their debt. One observation from regulators was that it is difficult to get a single party to take ownership of resolving issues when a debt has been handled by multiple collectors and the retailer themselves.

Regulators and consumer advocates also raised concerns that consumers are all being treated in the same way. Specifically, they have questioned the effectiveness of processes to identify the distinction between 'can pay' and 'can't pay' (customers suffering hardship or unable to meet commitments due to an event such as job loss, injury, illness, or family breakdown).

In a recent media release, TIO Simon Cohen noted that retailers have been making real improvements in their networks, their plans and their customer service.⁵⁰ He also noted the stronger rules and regulations in place to make sure consumers are treated fairly, and the role the TIO plays in highlighting the causes of customer complaint and working with the industry to improve services.

Retailers expressed a view that the issues relating to data quality between retailers and the debt collection industry were a key focus given the potential for damage to brand and reputation. Effective screening of debts (data washing) prior to sale was viewed as best practice, and one way issues can be eliminated.

From a best practice perspective, retailers also noted the need for effective contract mechanisms with debt collection businesses. Customer experience and dispute resolution were regarded as key metrics alongside recovery performance. The TCP Code was also held up as providing clear and accurate guidance on the obligations of service providers in the sector. The TCP Code requires compliance

⁴⁹ TIO Debt Collection briefing paper to ACCC, Dec 2014

⁵⁰ <https://www.tio.com.au/publications/media/tio-reduces-workforce>

with the ACCC/ASIC Debt Collection Guideline by both retailers and the debt collectors they engage.

Regulators and the debt collection industry agree that in a perfect world there would never be disputes with retailers, appropriate notices would be issued prior to debt sale, and there would be clear differentiation between 'can pay' and 'can't pay'.

Education Sector

Education is unique in terms of the diversity of institutions or businesses operating in the sector. It also aligns with key development stages in the lives of individuals, starting with child care operators, and progressing through pre-school, junior school, high school (public and private), Registered Training Organisations (RTOs) providing Vocational Educational Training (VET), and Universities.

Government assistance in the sector is significant. Child care rebates, notional free schooling, VET Fee-Help and Higher Education Contribution Scheme (HECS) are all programs designed to build Australia's knowledge economy, and seen as an investment in future capability.

The affordability of an education course, and therefore, the debt that will be incurred, will usually be a known quantity. As such, these known costs are manageable in most cases. However, there are notable exceptions, such as where consumers may be enrolled in unsuitable training courses via direct selling methods, or they have not received sufficient information regarding the full costs that will be incurred.

While debt collection is used across the entire sector, it tends to be more prevalent in areas where government assistance is limited, or there is a gap between government payments and the fees charged. This means child care centres, private schools, private training colleges and universities are more likely to see debt issues, as compared to the public education sector.

Of the 38 debt collection businesses surveyed, only ten indicated they provide services to the education sector, and of those, education (on average) represented less than 5% of total revenues. This indicates that debt collection activity is less prevalent in the education sector, when compared to other sectors, such as banking, telecommunications and energy.

One aspect of schooling is the unique nature of attendance, where students or parents engage with the institution every day. Therefore, in most instances where debt issues arise, there are multiple opportunities to discuss concerns directly, avoiding the need for escalation. Such an approach is considered best practice because it allows for better identification of the circumstances contributing to a debt being incurred, and can result in a more considered resolution.

Despite the relatively benign nature of debt collection in the sector, there is an emerging concern relating to the proliferation of RTO's providing VET training under the VET Fee-Help scheme. A recent report by the Department of Education states that the number of colleges authorised to offer loans has increased from 7 in 2008, to 247 in 2014. At the same time, students accessing VET Fee-Help have risen from 5,000 in 2009, to around 100,000 in 2013.⁵¹

⁵¹ The Australian, VET fee hikes becoming a reality, Feb 11th 2015, p31

In the rush to access the market, regulators have identified problematic behaviours with a number of service providers, particularly in relation to marketing practices. Promoting courses as free and signing up potentially vulnerable consumers (such as elderly in aged care facilities or consumers from non-English speaking backgrounds), were the chief concerns.

The other issue related to private training colleges, who market aggressively on price and flexibility (online), and target different segments of the community, many who may not be accustomed to undertaking study. The concern is that the student is signed up-front (sometimes on prepayment or direct debit), and training will not have commenced by the time the cooling off period has expired (7 days).

After starting the course the student may determine it is too difficult, or not suitable for their requirements, and attempt to exit the contract. However, by this stage the cooling off period has elapsed and the fees will be due and payable. This then becomes a debt collection issue, and with an average debt of \$5,000, the quantum is considerable. There is a similar issue when the student may not be able to continue the course for other reasons, such as illness, loss of income, or a change in personal circumstances.

Regulators consider that greater unemployment and the need to upskill will create more demand for services, and a risk that some of these practices will continue. Private colleges are more likely to use debt collection services, and so such practices may become an increasingly volatile issue for debt collectors choosing to operate in this part of the sector.

Regulators also say consumer awareness is critical. In FY14 the Australian Skills Quality Authority (ASQA)⁵² received a total of 1,398 complaints, of which 17% related to false or misleading marketing.⁵³

In reviewing debt collection issues, while there is no specific segmentation available, anecdotal information provided by ASQA suggested that less than 1% of complainants mentioned debt collection businesses. Where this occurred, complaints related more to the unreasonableness or aggressiveness of the RTO in seeking to recover a questionable debt.⁵⁴

⁵² ASQA is Australian Skills Quality Authority, the national vocational education and training (VET) regulator. ASQA accept complaints from students or members of the community about training providers.

⁵³ ASQA Annual Report 2014

⁵⁴ Anteris DCIR Interviews 2015

Healthcare Sector

While healthcare was an area of interest, engagement with the sector was challenging. A broad analysis of the sector was not possible as research was limited to private hospitals participating in the survey.

For those organisations that did participate, the primary view was that the sector had few debt issues because Medicare covered most patients. Where gap payments were applied, they tended to be paid up front and before a procedure was commenced.

Where debt did arise, respondents stated that the relationships with debt collectors were generally positive. Most debt was referred between 30 and 90 days past due, with recovery performance the main reason given for utilising a debt collector.

From a compliance perspective, respondents considered the debt collectors they engaged had a 'good' or 'strong' understanding of the ACL and ACCC/ASIC Debt Collection Guideline, although over 60% thought the industry could still do more to improve compliance generally.

Survey data from the debt collection industry revealed that 27% of respondents were actively collecting debt from the healthcare sector. On average, debt from the healthcare sector contributed only 7.5% of total revenues for those businesses, and possibly indicates that the healthcare sector's use of debt collection services is reasonably fragmented. This is supported by further analysis which shows that 67% of the debt collectors providing services to the healthcare sector were small businesses, with under 25 employees.

Government Sector

The Government sector has been a growth area for debt collection. The last three years has seen a number of state and federal agencies referring debt externally for the first time. The Australian Government is also one of the largest users of debt collection. Centrelink and the Australian Tax Office (ATO) have been long term users of these services, and collectively spend over \$30 million per annum.⁵⁵

In many ways Centrelink and the ATO have created the impetus or rationale for other agencies to use external debt collection services. They have applied very specific criteria to requirements for data management and physical and IT security, while regulatory compliance, quality assessment and robust contractual arrangements ensure only those organisations meeting these standards will be eligible to provide services.⁵⁶ These agencies do not sell debt, and therefore retain ultimate responsibility for the actions of the collectors they use.

Australian Government agencies interviewed have noted that the use of third parties can initially be problematic given complexities and minimum standards, however over time apprehensions generally ease as the relationship matures and service moves to a business as usual footing.

Agencies note that contractual arrangements with debt collectors have provided flexibility and allowed variations in workload to be managed without any significant disruption. Further, the use of debt collectors can provide a cost benefit when compared to recoveries generated using an internal capability.

Interview feedback indicates the trend to outsource government debt will continue to gain momentum, with parking, tolls and fines potentially emerging areas. While these are generally state and local government issues, there is little separating state and federal agencies in terms of the cost and effectiveness of managing debt recovery activity. For this reason, state government debt in particular is seen as an emerging area, with first time clients still entering the market.

As an example, the Queensland Government recently announced its intention for all new debt handled by the State Penalties Enforcement Registry (SPER) to be managed by a private broker, who will engage a pool of debt collection businesses. This debt includes speeding and toll evasion fines and other infringements issued by the state government and local councils.⁵⁷

Given the volume and complexities of internal systems, government recoveries also tend to be characterised by a highly automated approach. This requires

⁵⁵ AUSTENDER Website: Published contract notices July 2014 to June 2015

⁵⁶ ANAO Audit Report No.40 2012–13. Recovery of Centrelink Payment Debts by External Collection Agencies

⁵⁷ <http://www.abc.net.au/news/2014-08-07/unpaid-qld-government-fines-chased-private-debt-collectors/5656398>

significant system integration between agencies and external collectors, which can be challenging where agencies are operating in a legacy IT environment.

In reviewing complaints made to the Commonwealth Ombudsman, there were only minor references to debt collection issues, and these mainly related to the internal mechanisms of Centrelink and the ATO. In FY14 there were 1,396 complaints recorded against the ATO, of which 21% related to 'debt collection'.⁵⁸ The primary issues cited included inappropriate use of garnishees, rejection of payment arrangements and re-raising of debt.

The most common Centrelink complaint related to automated raising of debt for the Family Tax Benefit, and although external debt collectors were referenced, it was only in the context of being a component of the subsequent collections process.

Consumer advocates have noted that government fines and other debts make up a sizeable number of issues brought to their attention. There is some level of concern regarding government agencies pursuing debt from consumers suffering hardship or otherwise unable to pay debts.

Australian government agencies often have unique abilities in recovering debt, for example, Centrelink withholding payments. This is the most common method of repaying a debt.⁵⁹

Consumer advocates have questioned whether such arrangements can also have a detrimental impact on consumers, such as cases where temporary hardship may mean that the withheld amount is unsuitable. When this happens, Centrelink relies on the consumer to advise the agency of their change of circumstances, however advocates note this may not always be feasible for vulnerable consumers.

Based on interviews it seems the Australian Government's external collections strategy has been effective; it has delivered cost and operational efficiencies, workflow flexibility, and performance benefits. It also provides an alternative recovery strategy that can generate an outcome, which might not be achieved otherwise.

It seems clear that the stringent requirements imposed by government have benefited organisations who participate in the sector, by lifting standards and creating stronger compliance environments. The effort applied by Centrelink and the ATO to achieve such outcomes suggests a genuine partnership between customer and service provider.

⁵⁸ Commonwealth Ombudsman Annual Report 2014

⁵⁹ Centrelink Annual Report 2013-2014: Chapter 9, Debt management

Credit Repair

Without exception, industry, regulators, ombudsmen, retailers and consumer advocates have all been unified on one point, which is the negative impact of credit repair activities on consumers, EDR schemes and the integrity of the credit reporting system.

While there are nuances in perspectives, the issue is perfectly captured in the following extract from the Credit and Investments Ombudsman Annual Report 2014, (previously known as COSL) which states:

COSL has previously warned consumers to be wary of 'credit repair', 'credit fix' or 'debt solution' companies that claim they can 'improve' their credit report. Credit repair companies offer to 'fix' a consumer's credit report for a considerable fee.

We have seen instances of consumers being charged an upfront fee of up to \$900, and then around \$1,000 per default listing, even when the debt for which the consumer was default listed is under \$500.

Credit repair companies routinely approach COSL (and other ombudsman schemes), whose services are free of charge to consumers, to have default listings removed. In other words, consumers are paying significant amounts of money to access a service that is already available to them without charge.

Credit repair companies typically do not inform consumers that if a default or other negative listing is correct, in most cases it cannot be removed from their credit records; or that the credit repair companies themselves might use free ombudsman services despite charging consumers a significant fee.

Whether the complaint is made by the consumer using a credit repair company or to us directly, our finding on the merits of the complaint and its outcome can only be the same. For example, if the complaint is that a default listing should not have been made and we find that the default was correctly listed, we will not require the removal of the default listing.

Conversely, if we find that the default should not have been listed, we will order the default listing to be removed. The removal of default listings that are correctly listed compromises the integrity of the credit reporting body's database. This is not in the public interest.

COSL has observed too many instances of credit repair companies behaving badly. For example, they often do not act in the consumer's best interest and typically:

- *do not inform the consumer that the complaint can be dealt with by COSL (or other ombudsman scheme) at no cost to the complainant,*
- *obstruct or unreasonably delay COSL's facilitative dispute resolution process,*
- *make unreasonable decisions on the consumer's behalf – for example, a decision which may increase the consumer's liabilities,*

- *do not inform the consumer of all available options, offers of settlement, offers of hardship assistance or other proposals by the financial services provider or COSL,*
- *engage in a deceptive or misleading manner in their engagement with the consumer, financial services provider or COSL,*
- *ask COSL to enquire into or investigate matters that they know are irrelevant or lacking in any merit,*
- *do not inform the consumer of the potential risks and consequences of a course of action they are pursuing.*

In July 2014, the Consumer Action Law Centre (CALC) in conjunction with the Melbourne Law School also undertook research on the Credit Repair Industry, with their report citing many of the same concerns.⁶⁰

Other EDR schemes interviewed voiced similar opinions, suggesting the issue is a significant concern. All agree that the primary concern relates to ensuring adequate disclosure of the true cost to consumers (a free service).

Consumers can also obtain assistance from financial counsellors. Financial counsellors provide information, support and advocacy to assist people in financial difficulty. This is a free, independent and confidential service offered by community agencies, and largely funded by state and federal governments.

Financial counsellors can assist consumers in approaching EDR schemes or other options, such as communicating directly with the credit provider or credit bureau or making a complaint to the OIAC.

⁶⁰ <http://consumeraction.org.au/report-a-quick-fix-credit-repair-in-australia-summary-of-findings/>

The Role of External Dispute Resolution (EDR) Schemes

When reviewing what has transpired since the introduction of the Australian Credit Licence in 2011, and the accompanying obligations around mandatory EDR for credit regulated debt, it appears that these changes have had an impact, from both a consumer protection and industry standpoint.

Regulators and consumer advocates have been supportive of EDR schemes as a mechanism for improving industry compliance. Based on interviews and survey data, the larger industry players have accepted the merits of EDR, and built processes and systems to effectively manage complaints and their interactions with EDR schemes. They also point out that the ability to control their processes (as opposed to contingent collectors) has allowed for greater flexibility in approach, and therefore ultimately less complaints.⁶¹

These views are largely supported by the EDR schemes, which suggest that the industry has matured over the last three years and is now more likely to take a commercial perspective when considering costs and outcomes associated with matters referred to EDR schemes. It was considered that the introduction of mandatory EDR had initially been challenging for some businesses, but over time there had been a greater acceptance of the role EDR schemes plays, and this had resulted in a more proactive engagement with such schemes.⁶²

At the time of its introduction, CAV considered removal of the exemption for an Australian Credit Licence as a possible alternate licensing model for the broader debt collection industry.⁶³ This option would have required all debt collectors not already members of an EDR scheme, to become members of one, such as FOS or the CIO.

CAV suggested there would be advantages for consumers, who could access an independent process to have their complaints reviewed, and that the independence of an EDR scheme allows for objectivity and may lead to faster resolution.

However, CAV also noted there were disadvantages. These include: that membership to an EDR scheme would impose time and financial costs, there was a possibility the EDR scheme may be exploited by consumers and used to hold up legitimate collection processes, and that the EDR process may slow down the inevitable collection process and result in consumer being in a worse financial position (unless interest is frozen and the consumer complaint is upheld).

⁶¹ Anteris DCIR Interviews 2014

⁶² Anteris DCIR Interviews 2014

⁶³ CAV Debt Collection Harmonisation Options Paper 2011

However, there are other challenges in using the existing Australian Credit Licence framework as a potential solution to broader debt collection licensing issues, the most immediate being that it only applies to credit regulated debt.

The last ACDBA Annual Data Survey, which breaks down industry into value and volume (2011), indicates that the number of debts under management in the financial services sector is 57.4% by value, but only 20.1% by number. This is an important distinction as it is debt collection activity that influences complaint volumes.

In their options paper, CAV also suggest mandatory EDR as a potential complaint management mechanism. However, if all debt collectors were required to become a member of an EDR scheme (e.g. FOS or CIO), then those schemes could only manage conduct or privacy related complaints, as they have no mandate to take on issues relating to other sectors, such as telecommunications or energy, which are dealt with by industry-based ombudsman schemes.

EDR is also impractical for contingent collections, where as an agent, complaints are referred back to the original credit provider and dealt with through their internal processes. There are a number of challenges to overcome before EDR can be considered as a broad based compliance mechanism.

Industry Divergence

Throughout this report there has been a number of references made to the changing nature of industry, in particular, the increasing divergence between large call centre operators, and smaller businesses providing an array of services, including debt collection. There is also a 'mid-tier' section of industry that does not fit neatly into either category. These are typically debt collection businesses employing between 26 and 100 staff, and operating in a more traditional (non-call centre) debt collection environment. Most are private businesses.

Larger businesses have argued that significant investments in technology and compliance are behind improved behaviours within industry. However, they question the degree this extends to all of industry, particularly smaller operators who may not have the sophistication, scale or financial capacity to support similar levels of compliance.

ACCC contact data analysis supports this view.⁶⁴ When analysing the top ten traders by the number of complaints and adjusting for activity (by measuring complaint per FTE), there is a clear correlation between size of business and complaints (proportionally).

A review of enforcement activity provides another perspective. Although a number of smaller businesses have found themselves the subject of actions commenced by regulators, as noted previously, they are not alone.

The IMA, whose members are largely made up of smaller operators, agrees that the transition occurring within industry has delivered improved outcomes and resulted in reduced complaint levels.

The IMA notes that other factors have also contributed to a more compliant industry. These include the mass adoption of the ACCC/ASIC Debt Collection Guideline, the introduction of EDR for debt purchasers, improved contractual arrangements between creditors and debt collectors, and a concerted effort by the IMA to educate and keep members aware of their compliance obligations.⁶⁵

The IMA have also suggested that while smaller businesses may not have access to the more sophisticated operational environments of the larger businesses, they tend to benefit from higher staff retention rates, meaning knowledge and experience are retained in the business, resulting in better compliance outcomes. The capability of individual business owners will also play a part.

⁶⁴ See ACCC Complaint Analysis on page 80 of this Report

⁶⁵ Anteris DCIR Interviews 2014

Licensing and Regulation Environment

As mentioned earlier in the report, there are inconsistencies in regulatory and licensing requirements for debt collectors in Australia. Inconsistencies can lead to a range of problems and associated costs for both consumers and industry. For example, collectors collecting debts interstate are required to adhere to different licensing arrangements, some more prescriptive than others. Collectors are also required to adhere to a range of different conduct regulations depending on the requirements of the industry in which the debt has arisen.

Harmonisation Feasibility Project

In 2009, the question of debt collection licensing and regulation harmonisation was placed on the forward agenda of the Ministerial Council on Consumer Affairs, now the Consumer Affairs Forum (CAF).

In 2011, the Standing Committee on Consumer Affairs (SCOCA), now Consumer Affairs Australia and New Zealand (CAANZ) commenced a national project to examine the feasibility of harmonising debt collection regulation across Australia and in the context of the national consumer credit regime.

A key part of the project, led by CAV, was the release of a public options paper in October 2011, which sought feedback on proposals for harmonising debt collection regulation in a range of areas, including licensing, trust accounting, complaints handling, administration, information standards and education requirements.⁶⁶

The options paper considered a range of licensing models, including: maintaining the status quo (state based licensing), removal of the third party exemption for collectors under the NCCP, use of the National Occupational Licensing System (NOLS), mandatory exclusion requirements (negative licensing), deemed licensing under the NCCP (mutual recognition), or a separate national licensing act. Each was shown to have advantages and disadvantages.

Similarly, a range of conduct options were considered, including a voluntary industry code of conduct, a mandatory industry code of conduct (based on the ACCC/ASIC Debt Collection Guideline) or legislative options (either as a separate piece of legislation or as an addition to existing state and territory legislation).

Feedback on the options paper was mixed. While there were some areas in which stakeholders tended to agree, there were others in which stakeholder views differed, indicating that it would be difficult to reach consensus on the options presented.

⁶⁶ CAV Debt Collection Harmonisation Options Paper 2011

In March 2013, after considering stakeholder feedback, and a subsequent paper exploring the possibility of co-existing regulatory frameworks, CAANZ agreed to discontinue the project.

Standards for the industry continue to be set by state and territory laws, as well as by the Australian Consumer Law, the NCCP, and the ACCC/ASIC Debt Collection Guideline (updated in July 2014).

Consumer advocate perspectives

The Consumer Credit Legal Centre (CCLC – now known as the Financial Rights Legal Centre) notes the considerable complexity of regulations across multiple jurisdictions and recommends cross border harmonisation.⁶⁷

In a 2012 report, CALC recommended increased monitoring and enforcement activity, tighter rules around when debts subject to hardship claims can be referred to an external collector, and a prohibition of contractual terms that allow for cost recovery.⁶⁸

CALC has also noted that the additional protections in Victoria are an important influence on good industry practice. In particular, CALC notes the inclusion of specific prohibited debt collection practices, and that consumers are able to seek compensation for distress or humiliation when these practices are engaged in.⁶⁹

However, some consumer advocates argue that the ACCC/ASIC Debt Collection Guideline provides clear guidance on best practice and where problems arise, it may be lack of enforcement that is the issue, as opposed to the underlying regulations.⁷⁰

Industry perspective

In their response to the CAV review paper, the ACDBA stated its support for a negative licensing regime, preferably under a national debt regulator, as the most effective means of addressing the regulatory burden faced by debt collectors and debt purchasers within the national context.

The ACDBA argued that the sector had matured, and was now a far more professional and responsible industry. The ACDBA note that modern debt collection is predominantly call centre based, with little, if any, face-to-face consumer contact. Technology within a call centre environment allows for calls to be monitored and reviewed, which has brought benefits from a quality perspective.

⁶⁷ CCLC, 2014

⁶⁸ CALC, 2012

⁶⁹ <http://consumeraction.org.au/media-release-vcac-cases-will-put-victorias-new-debt-collection-laws-to-the-test/>

⁷⁰ Marrickville Legal Centre, 2014.

The ACDBA suggest that current consumer laws, in conjunction with the ACCC/ASIC Debt Collection Guideline, provides adequate consumer protection and clear guidance for industry. The ACDBA also argue that members purchasing credit regulated debt should remain licensed under that regime (the Australian Credit Licence).

Regulator perspectives

Regulators generally agree that there has been an improvement in the industry since the introduction of the Australian Credit Licence for debt purchasers, and the associated obligations that bought, particularly mandatory EDR.

The NSW Department of Police and Justice claims that debt recovery mechanisms are working well, and where issues do arise, they often relate to complexity.⁷¹ In November 2014, the NSW Parliament's Legal Affairs Committee tabled a report relating to debt recovery in NSW.⁷² Submissions were taken from a range of stakeholders, and ultimately the committee made two recommendations, firstly that NSW move to a negative licensing scheme (along similar lines to Queensland with separation for phone based and face to face debt collection), and secondly, that oversight and control move from NSW Police to Fair Trading NSW. The Parliament has until May 2015 to respond.

The state based regulators commented that ASIC and the ACCC have taken an active leadership role within the debt collection sector, both in terms of enforcement actions and industry communications. There was a sense that ASIC and ACCC were well aware of industry issues, and were effective in sharing relevant information with state ACL regulators. Both agencies continue to monitor the industry and take appropriate action to protect the interests of consumers.

International experience

There is little global consistency in the regulation of debt collection practices. A number of developed markets, such as the European Union, have stringent regulations while many developing markets have little or no formal oversight. Two approaches considered below, that of the United States of America (US) and the guidelines of the International Finance Corporation (IFC), a subsidiary of the World Bank.

In the US the *Fair Debt Collection Practices Act* (FDCP) was introduced in 1978. The FDCP was a response to growing concerns about the activities and behaviour of some sections of the industry. Its intent was to:

...eliminate abusive, deceptive, and unfair debt collection practices. It also protects reputable debt collectors from unfair competition and

⁷¹ Department of Police & Justice, 2014

⁷² www.parliament.nsw.gov.au/prod/parlment/committee.nsf

*encourages consistent state action to protect consumers from abuses in debt collection.*⁷³

In the US, there are also state laws that relate to debt collection practices that can have a dramatic effect on the outcome of debt collection for consumers. A 2013 study examining the impact of state regulation on collection outcomes noted that anti-harassment laws influenced consumers' legal choices in response to collections efforts.

In particular, the study observed that consumers residing in jurisdictions with anti-harassment laws were less likely to file for bankruptcy but more likely to default without entering bankruptcy. The study observed that while anti-harassment laws influenced consumer choices after the point of default, such laws did not influence the level of initial 'choice' between payment and default.⁷⁴

A 2013 Federal Trade Commission (FTC) study in 2013 of debt buyers noted:

- a rise in consumer complaints as the amount of debt purchasing increased
- heavy industry concentration with nine out of ten of the largest debt purchasers collectively acquiring 76% of debt sold (in 2008)
- consumers disputed 3.2% of debts, with half of these verified
- information asymmetry, where creditors and their agents held more information than the debtor about contractual terms and obligations, affecting the capacity of consumers to determine both responses and rights.⁷⁵

The report also noted information asymmetries may exist between creditor and collector with little incentive for collectors to obtain that information. As a result, the level of information exchange between seller and buyer potentially disadvantages consumers.⁷⁶

The IFC has considered regulatory approaches and outcomes in developed markets and prepared a 'knowledge guide' to support the development of financial infrastructure in developing and emerging markets. The guide provides general advice, recognising that each jurisdiction is at a different stage of development and requires a regulatory model that considers local customs and norms.

The knowledge guide makes two important observations that are of particular relevance to Australia. First, it notes a clear link between the sophistication of legal

⁷³ Board of Governors of the Federal Reserve, n.d., Fair Debt Collection Practices Act, Compliance Handbook, <http://www.federalreserve.gov/boarddocs/supmanual/cch/fairdebt.pdf>

⁷⁴ Dawsey, A, Hynes, R & Ausubel, L, 2013, Non-judicial debt collection and the consumer's choice among repayment, bankruptcy and informal bankruptcy, American Bankruptcy Law Journal, Winter 2013

⁷⁵ Federal Trade Commission, 2013, The structure and practices of the debt buying industry.

⁷⁶ FTC, 2013

infrastructure and that of the tactics employed by collectors. Second, it notes that regulation and policy are one of three pillars required to enhance borrower protection and that a formal framework for legal recourse is particularly important for protecting consumer rights.⁷⁷

⁷⁷International Finance Corporation, 2012, Responsible debt collection in emerging markets, <http://www.ifc.org/wps/wcm/connect/587d25004a9f117795ebfdeec99f439e/Responsible+debt+collection-Final.pdf?MOD=AJPERES>

APPENDIX A: LIST OF PARTICIPATING ORGANISATIONS

The following organisations provided input into the debt collection research project, either through the interview process, participation in the survey, provision of data, or as a result of responding to specific enquiries relating to various aspects of the research.

Anteris Consulting and the ACCC would like to acknowledge the time and effort of all participants, and thank those organisations for their contribution to the findings and observations contained within this report.

Organisation	Segment
ACM Group	Debt Collection Industry
Alinta Energy	Retailer – Energy
Anglicare Victoria	Financial Counsellor
Australian Collectors & Debt Buyers Association (ACDBA)	Debt Collection Industry Body
Australian Debt recoveries (ADR)	Debt Collection Industry
Australian Institute of Credit Management (AICM)	Creditor Industry Body
Australian Receivables Ltd (ARL)	Debt Collection Industry
Australian Recoveries & Collections	Debt Collection Industry
Baycorp	Debt Collection Industry
BCI QLD P/L	Debt Collection Industry
Berry Street	Financial Counsellor
Bethany Community Support	Financial Counsellor
Blitz Credit Pty Ltd	Debt Collection Industry
Care Inc	Financial Counsellor
CatholiCare Social Services	Financial Counsellor
CCC Financial Solutions Pty Ltd	Debt Collection Industry
Central Victorian Mercantile	Debt Collection Industry
Centrelink	Retailer - Government
Charter Mercantile	Debt Collection Industry
CIO (previously COSL)	Ombudsman
City of Stirling Financial Counselling Service	Financial Counsellor
CLH Legal Group	Debt Collection Industry (Legal Firm)
Collection House Group	Debt Collection Industry
Commercial Credit Services Pty Limited	Debt Collection Industry
Consumer Action Legal Centre (CALC)	Consumer Advocate
Consumer Affairs VIC	Regulator

Credit Collection Services Group Pty Ltd	Debt Collection Industry
Credit Corp Ltd	Debt Collection Industry
Dun & Bradstreet	Debt Collection Industry
Dept. of Commerce WA	Regulator
Derwent Mercantile	Debt Collection Industry
Diversitat	Financial Counsellor
eCollect.com.au	Debt Collection Industry
EWOV	Ombudsman
Fair Trading NSW	Regulator
Fair Trading Qld	Regulator
Financial & Consumer Rights Council (FCRC)	Consumer Advocate
Financial Counsellors Australia (FCA)	Consumer Advocate
Forbes Dowling Lawyers	Debt Collection Industry (Legal Firm)
Fremantle Community legal Centre	Financial Counsellor
Griffith-Jones & Associates	Debt Collection Industry
Herringbone Consulting	Retailer Consultant - Telco
Hollywood Private Hospital	Retailer - Healthcare
Impact Financial Services	Debt Collection Industry
Institute of Mercantile Agents (IMA)	Debt Collection Industry Body
Jewishcare	Financial Counsellor
John Flynn Private Hospital	Retailer - Healthcare
Kessler Group	Industry Supplier
L-Collect Pty Ltd	Debt Collection Industry
Legal Services Commission VIC	Regulator
Lifeline Darling Downs & South Western Qld	Financial Counsellor
Lismore & District Financial Counselling Service	Financial Counsellor
Lutheran Community Care	Financial Counsellor
Mercantile Credit Management Pty Ltd	Debt Collection Industry
Midstate CreditCollect Pty Ltd	Debt Collection Industry
Milton Graham Lawyers	Debt Collection Industry (Legal Firm)
Momentum Energy	Retailer - Energy
Mtsymco Pty Ltd	Debt Collection Industry
MWANT	Financial Counsellor
National Mercantile	Debt Collection Industry
North Shore Private	Retailer - Healthcare
Odyssey House Victoria	Financial Counsellor
Origin Energy	Retailer - Energy
Persuasion Pty Ltd	Debt Collection Industry

Pioneer Credit Ltd	Debt Collection Industry
Probe	Debt Collection Industry
Ramsey Healthcare	Retailer - Healthcare
RMIT University	Retailer - Education
Southcare Inc	Financial Counsellor
Sphere Legal	Debt Collection Industry (Legal Firm)
SR Law	Debt Collection Industry (Legal Firm)
St George Private Hospital	Retailer - Healthcare
Stoneink Pty Ltd	Debt Collection Industry
The Hunter Group	Debt Collection Industry
TIO	Ombudsman
Uniting Care ReGen	Financial Counsellor
Uniting Care Wesley Bowden	Financial Counsellor
Uniting Care Wesley Country	Financial Counsellor
Upper Class Collections	Debt Collection Industry
Vodafone	Retailer - Telco
Warrigal Private Hospital	Retailer - Healthcare
Wesley Mission	Financial Counsellor
Women's Legal Service Victoria	Financial Counsellor