
Guidance and information

Undue harassment and coercion in debt collection

The Commission has been examining the operation of s. 60 of the Act since mid-1998. Section 60 of the Act prohibits a corporation from using:

... physical force, undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

The Commission's work in this area was prompted, in part, by concerns raised by consumer organisations and representatives that undue harassment and coercion was systemic in the area of debt collection. The Commission also considered this issue to be important because:

- s. 60 is an area largely untested by the courts, and there is little or no guidance on its scope or practical application;
- many of the consumers likely to be the subject of debt collection activities have low incomes and/or are otherwise vulnerable or disadvantaged, and also unlikely to be aware of their rights;
- the consequences of undue harassment can be fairly significant, and can affect a consumer's health, relationships and employment; and
- debt collection is an issue of national importance.

The Commission's project involved both market review and investigation/enforcement activity.

The Commission's staff gathered information on debt collection practices from a variety of sources, including individual businesses and consumers, industry and consumer organisations, and government officials. The

Commission formed the view that a useful outcome of the project would be industry guidance on the scope of s. 60. As a result it developed and released for comment a draft guideline.

The draft guideline was subject to extensive consultation, including a round-table with participants from industry, consumer and government. The final guideline, entitled *Debt collection and the Trade Practices Act*, represents the Commission's views of conduct that may be at risk of contravening s. 60 of the Act. The guideline does not have legal force. It is the role of the courts to provide a definite interpretation of s. 60. However, the Commission will use the guideline, together with all other relevant circumstances, when assessing any s. 60 complaints received.

The underlying principle of the guideline is that, although a corporation is entitled to reasonable steps to collect debts owed to it or its client, debtors are entitled to be treated fairly, with respect and courtesy, and should not be unduly harassed or coerced. The guideline contains 10 conduct principles, dealing with the major areas of concern raised during the Commission's work. These include:

- timing and frequency of telephone calls and other communications;
- deceptive tactics about the consequences of non-payment or about the recovery process;
- disclosure of information to third parties; and
- communications at the debtor's workplace.

A guideline such as this has limited impact if businesses do not have a system in place to ensure compliance. The Commission therefore developed a compliance guide for businesses collecting debts. The guide is based on the Australian Standard on Compliance Systems (AS3806) and is structured to meet the needs of both small and large businesses.

The Commission also published a consumer information leaflet entitled *Are you being harassed about debts?*. This leaflet is designed to educate consumers about their rights and responsibilities in relation to debts, and also gives practical advice about what to do if financial difficulties arise.

The Commission has also increased its investigation activity in relation to s. 60 complaints. It received more than 230 complaints and inquiries during 1998, and more than 130 complaints and inquiries in the first seven months of 1999. Matters pursued by the Commission often resulted in changes in practice by the collector concerned. To date, the Commission has not instituted proceedings against a collector for contravention of s. 60. However, it would not hesitate to do so in an appropriate instance, for example, where such proceedings would be an effective and efficient means of stopping the unlawful conduct and deterring others from engaging in similar conduct in the future.

The response of both business and consumers to the Commission's work in this area has generally been positive. Copies of the report have been distributed to industry, consumer and government representatives, and the consumer leaflet has been widely distributed, particularly to financial counsellors and other community organisations.

The Commission encourages businesses engaged in debt collection to implement the guideline in their day-to-day practices. It will continue to monitor the market and the impact of the guideline to ensure that both businesses and consumers are treated fairly.

The report and the guideline, which includes the compliance guide, are available from the Consumer Protection area of the Commission's website. The guideline (\$10 per copy) and the leaflet (free) are also available from Commission offices.

ACCC establishes legal panel for enforcement legal work

The Commission has announced the establishment of a panel of external law firms

to provide legal services in connection with its enforcement work. (The Commission also has a substantial in-house legal practice — the ACCC Legal Group.)

In June this year the Commission called for tenders from a substantial number of legal firms with demonstrated trade practices expertise to provide legal services in relation to the Commission's enforcement activities.

Enforcement is a core activity of the Commission. The Commission undertakes more than a 1000 investigations a year. While most matters are not pursued or are resolved administratively (often through the acceptance of court enforceable undertakings) the Commission has some 30 to 50 court cases in progress at any one time.

These cases typically involve breaches of the restrictive trade practices provisions (Part IV) or consumer protection provisions (Part V) in the Trade Practices Act and, increasingly, breaches of the unconscionable conduct provisions (Part IVA) and industry codes (Part IVB). The Commission has also recently commenced enforcement proceedings in relation to alleged breaches of the telecommunications anti-competitive conduct provisions (Part XIB).

The Commission generally expects an increase in its enforcement activities in relation to electronic commerce and international transactions and commercial operations.

In addition, the Commission will have a substantial enforcement role in relation to potential price exploitation pursuant to the new Part VB enacted as part of the introduction of the New Tax System, including the goods and services tax.

After a substantial evaluation process, the Commission has decided to appoint the following firms to its panel (subject to final contractual negotiations):

- Australian Government Solicitor
- Corrs Chambers Westgarth
- Phillips Fox
- Dunhill Madden Butler
- Slater and Gordon

The panel firms are required to provide legal services in accordance with the Deed of Standing Offer prepared by the ACCC. The contractual arrangements contained in the deed reflect the Commission's focus on achieving its enforcement objectives through strong project management of litigation under the active direction of the Commission's investigative staff.

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MOU between ACCC and HCCC

On 20 July 1999 ACCC Chairman, Professor Allan Fels, and the Commissioner for the New South Wales Health Care Complaints Commission, Ms Merrilyn Walton, signed a memorandum of understanding on cooperation between the two agencies.

The HCCC is an independent statutory body established in NSW to investigate, review and resolve complaints about health services and facilities and improve standards of health care.

The ACCC has been active in ensuring that advertising for health care services and other conduct by health practitioners do not mislead the public.

The MOU builds upon the already close relationship between the two organisations. For example, ACCC staff liaise with the HCCC by referring complaints about health care services, exchanging information about the ACCC's involvement in particular matters and contributing to health care inquiries chaired by the HCC Commissioner.

The proposed agreement will formalise the liaison between the two agencies and will provide for better coordination and cooperation between them on both enforcement and education activities.

Under the memorandum, the two agencies will refer complaints to the most appropriate agency, exchange information where that is

permitted by law and undertake joint responses to problems in the market. The agencies are currently working to develop a guide to the promotion of health services and a conference on advertising medical services to be held in October 1999.

Copies of the memorandum are available from the ACCC's website
(<http://www.accc.gov.au/download/mediadwld/HCCCMOU2.zip>)

Y2K — The Year 2000 problem

The Commission has published a News for Business publication on the Year 2000 problem and the Trade Practices Act. The publication covers the rights and obligations of business under the Act. It is available free from Commission offices.

The Office for Government On-Line (OGO) has also published an informative leaflet on the Year 2000 problem, *Y2K Report, You and the Millennium Bug*. It discusses the effects of the problem on common household items, electrical goods, utilities and essential services. It also discusses what measures you may take and the rights of consumers should goods or services be affected. These leaflets are available free from ACCC and OGO offices.

Self-declared environmental marketing claims

The Commission has issued a News for Business leaflet on environmental marketing claims that are 'self-declared'. These claims may take many forms, including statements, symbols or graphics on product or package labels.

In February 1992 the Commission issued a guideline on environmental claims in marketing, which provided guidance to industry about claims that may breach the Trade Practices Act. Recently the Joint Standards Australia/Standards New Zealand Committee on

environmental labelling adopted the ISO draft international standard, *Environmental labels and declarations — self-declared environmental claims*, as an interim Australian Standard.

The leaflet discusses some of the requirements of the standard and sets out the Commission's views on it. Examples are given of how the courts have approached cases involving allegations of misleading or deceptive conduct in relation to environmental claims. The leaflet also gives guidance on procedures that will help companies to comply with the Trade Practices Act and the interim standard.

The leaflet is available free from Commission offices.

GST updates

The Commission has published a series of leaflets to advise business and consumers on changes that will affect them under the New Tax System legislation.

The changes include new provisions of the Trade Practices Act prohibiting price exploitation (9 July 1999), the reduction of the Wholesale Sales Tax on many products from 32 per cent to 22 per cent (29 July 1999), and introduction of the GST (1 July 2000).

The topics covered by the leaflets are:

- *News for business: Pricing claims and the New Tax System*
- *News for business: Pricing — during the New Tax System transition*
- *GST talk 1: Electronic goods — the price will go down*
- *GST talk 2: The New Tax System — what changes? when?*
- *GST talk 3: Protecting consumers in the New Tax System*

The publications are available free from Commission offices.

Guide to Section 87B of the Trade Practices ACT

The Commission has published a revised version of its guide to s. 87B of the Act. The guide outlines the Commission's current approach to administration of s. 87B in connection with its enforcement activities. It discusses when s. 87B undertakings are considered appropriate and describes typical elements of undertakings. The booklet also covers specific procedural issues related to merger undertakings.