

DEALING WITH DEBT: YOUR RIGHTS AND RESPONSIBILITIES

WHILE THE STEREOTYPE OF THE THREATENING COLLECTOR HARASSING A DEBTOR IS LARGELY OUTDATED, THERE ARE STILL SOME DEBT COLLECTORS WHO BEHAVE UNETHICALLY OR ILLEGALLY, PERHAPS USING PHYSICAL FORCE, UNDUE HARASSMENT OR COERCION WHEN COLLECTING DEBTS.

Unlawful behaviour by debt collectors can stem from their being unaware of the Commonwealth consumer protection laws. The latest information on these can be found in the joint ACCC and the Australian Securities and Investments Commission (ASIC) publication, *Debt collection guideline: for collectors and creditors*. It replaces the ACCC's *Debt collection and the Trade Practices Act* published in June 1999.

The guidelines will help:

- > collectors (including collection agencies, debt buy-out services, in-house collections departments of businesses and government bodies, solicitors and others)
- > creditors who use external collection agencies to collect debts or sell or assign debts to third parties
- > financial counsellors and debtors' advisers when negotiating with collectors about their practices.

If a collector follows the guidelines, they are unlikely to behave in a way that could constitute undue harassment and breach the Trade Practices Act. For example, they would know not to:

- > contact a debtor at an unreasonable hour (before 7.30 am or after 9 pm)
- > unnecessarily or indiscreetly visit a debtor at their workplace
- > contact a debtor more than is necessary
- > if contacting a debtor's family or friends, discuss the debt with them or talk with the debtor's children without permission
- > lie or mislead a debtor about who they are and who they represent, how much money is owed and the consequences of the debt remaining unpaid.

The new guidelines, although largely for debt collectors, also cover the responsibilities of debtors. It advises them, for example, to take action before they get into difficulties, to contact their creditors to negotiate a variation in payments or other arrangement and to consider seeking help from a community-based financial counsellor, solicitor or other qualified adviser. It also makes it clear to them that they remain responsible for their debts, even if a debt collector breaches the Act. The brochure *Dealing with debt: your rights and responsibilities* also published jointly by the ACCC and ASIC gives consumers detailed advice on dealing with debt matters.



ASIC and ACCC: their roles

ASIC deals with debt collection complaints relating to a financial service. This includes debts on credit card accounts, personal or home loans, finance provided by a finance company for items such as a car or household goods, as well as fees for the provision of financial advice.

The ACCC deals with debt collection complaints relating to goods and non-financial services. This includes debts for telephone services or other utilities, and for the services of tradespeople and professionals, when immediate payment is not required.