



Australian Institute of Private Detectives

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TREASURY TELE-CONFERENCE

A.I.P.D: Present:- John Bracey & Alan Crothers

Treasury: Present:- Alix Gallo & Others

ISSUES SUMMARY OF MEETING - WED 5th AUGUST 2009

RE: **National Consumer Credit Protection Bill 2009**

AIPD advised Treasury of main concerns:-

- No protection in Draft Bill for Consumer at all
- Consumers need to be protected against unscrupulous debt collection processes of Credit Providers. A suitable compliance framework needs to be set up (ASIC/ACCC) to achieve this goal
- No suitable legal framework exists in Australia re: mercantile and debt collection activities. State licensing is extremely inadequate, inconsistent and does not cover employed personnel. There is also NO licensing at all in Western Australia or the ACT.
- No compliance mechanisms in Draft Bill. We do not believe that ASIC/ACCC have the resources to ensure compliance of Credit Providers and Agents and also do not have expertise in relation to debt collection / mercantile matters
- Current DRS (Dispute Resolution Schemes won't assist Consumers unless there is provision for proper Investigation of complaints (and conducted by qualified Investigators under the AQF framework)

AIPD advices as to suggested improvement of the Draft Bill for the Protection of Consumers, which is supposedly the entire purpose of the subject Bill – The National Consumer Credit Protection Bill 2009.

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- ✓ Nominated DRS (Dispute Resolution Scheme) re: Debt Management, Debt Collection and investigation matters
 - ✓ The company's Fraud Management processes
 - ✓ The company's policy and applications in relation to dealing with Identity Fraud and Fraud perpetrated against the customer
 - ✓ Cite the policy standards of the staff engaged to conduct Fraud Investigations and General Investigations (**Must meet the AQF course standards as a minimum**)
 - ✓ Show SOP's, KPI's, to meet ASIC/ACCC Debt Management Guidelines (Mandatory formal processes to be followed by the Credit Provider Licence holder) based on 'reasonable trade practices' to work with clients that fail to meet their contractual obligations and require Debt Management assistance.
2. **DRS (Dispute Resolution Schemes)** won't assist Consumers unless there is provision for proper Investigation of complaints (and conducted by qualified Investigators). Regulations can cite qualification standards for DRS and DRS Investigators and allow for any ongoing improvement.
- i). DRS Investigators must at least meet national Australian Qualifications Framework (AQF) education standards. DRS require inbuilt compliance and penalty provisions. E.g. *Any established impropriety by Credit Provider or Agent may attract a set Penalty under the Penalty Provisions (to be set out in the Regulations, relating to severity of the breach) and also may affect the relevant person to maintain employment in the Credit Provider Industry or affect the Licence status of the Credit Provider to operate.*

¹ (to be developed)

- ii). The activities of the Credit Provider must be linked to the Credit Provider's Licence certification to ensure optimum application and propriety.
- iii). The Debt Management and Collection and Mercantile personnel (internal or external) should hold **Certification** through a recognised Industry Representative Body relating to the Mercantile/Investigative profession, in accordance with the **National Code of Practice for Investigators and Mercantile Agents 2008**. (See www.aipd.com.au).

The Code has a three (3) tiered DRS, penalty provisions, enforcement provisions as well as a CPD Scheme.

1. **Incorporate Debt Collection and Investigations in the Bill (This is a premium concern for Australian Consumers when involved as a recipient of credit products or finance services lending).**

- i). No complex alterations of the Draft Bill are required to achieve this. Just need to add references to debt collection and investigations to current Bill where appropriate. (Refer to AIPD Submission for detail). *E.g. - Draft Bill already refers to Credit Provider Licence holders must hold suitable qualifications. Need to merely extend this to also cover persons involved in Mercantile Activities, (Debt Collection and Debt Management, Repossession of Property) / and Investigation activities - which are not addressed at all in current Draft Bill.* The Regulation can cite qualification standards and allow for any future updating over time as well as current and future compliance requirements. **Education must at least meet national Australian qualification Framework (AQF) education standards and the Financial Services Training Package FNS04.**
- ii). There will be no conflict at all with any State based Mercantile Agent or Investigators legislation. Just need to add in Regulations reference to where Debt Collection / Investigators are external providers, they must also meet any State Licensing requirements.
- iii). The above inclusions in the Bill will achieve some National compliance standards in the important roles of Mercantile activities and Investigations, in relation to the Finance and Insurance Services industry, but in the national interest of Australian Consumers, which has never previously been achieved in Australia.
- iv). Ensure that a Debt Management Plan submission is a requirement of the Credit Provider License Application to ASIC. Meaning, a Plan that meets Debt Collection and Investigations Framework guidelines issued by ASIC/ACCC. (Similar to a process adopted by DOTARS with AOC (Airline Operator Certificate holders) operators when implementing the Aviation Transport Security Act 2004. Each AOC was required to submit a security plan based on the issued Framework guidelines.

Each Credit Provider's Debt Management Plan should meet the ASIC/ACCC Plan Guidelines ¹ and include (but not restricted to):-

- ✓ The company structure of the Licence Applicant organization
- ✓ Officeholders responsible for overseeing the Debt Management Portfolio
- ✓ Qualifications of the Responsible Officers nominated to hold such a position (**Must include as a minimum the Certificate III in Financial Services (Mercantile Agents) FNS30404 as well as a Certificate IV in Financial Services under the FNS04 Training Package.**)

3. **It is respectfully recommended that Treasury consider the inclusion of the established CoP 2008 in the Regulations.**

We understand the ASIC/ACCC do not have to powers to register an **Industry Code of Practice** but only Codes of Conduct after submission and assessment against their statutory and policy and guidelines. It is important for all parties to understand the difference between a Code of Practice and a Code of Conduct. They are two completely different documents. In short, a **Code of Practice** identifies key practice and acceptable operational standards relating to an entire industry or profession (in the interests of 'best practice' and ongoing improvement) - A **Code of Conduct** is essentially a brief document relating only to the propriety standards of a person in an industry of profession. A Code of Conduct, or various Codes of Conduct can be incorporated within an Industry Code of Practice however not visa-versa. Governments cannot write an Industry Code of Practice.

Further –

A Code of Practice can be written by an Industry Body, **provided** suitable and evidentiary consultation processes are conducted with stakeholders and government. There can only be one Code of Practice for an Industry. Once established, a CoP remains an evolutionary document with specified time-review requirements and inherent extraordinary amendment capabilities. The Code was established in 2005 and underwent a Review process in 2008 and ratified.

4. We have grave concerns re: the National Consumer Credit Protection (Fees) Bill 2009, and we would need to have a greater explanation of its implications for the consumer.

The AIPD respectfully recommends that additional meetings be arranged with Treasury (and ASIC and ACCC) to attempt further meaningful discussions regarding the above matters, in order to achieve timely, realistic solutions within this vitally important legislation.

As a leading representative body in the Mercantile and Investigative industry, we reiterate our free and open offer of expertise to Government, to assist in achievement of quality legislation, in the interests of fair trade practices for the consumer and ALL stakeholders.

Kind regards,

John Bracey
Alan Crothers
8/8/09