



AUSTRALIAN COLLECTORS &  
DEBT BUYERS ASSOCIATION

13 August 2015

The Commissioners  
Victorian Law Reform Commission  
GPO Box 4637  
MELBOURNE VIC 3001

By email: [law.reform@lawreform.vic.gov.au](mailto:law.reform@lawreform.vic.gov.au)

Dear Commissioners,

## **Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries**

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Thank you for the invitation to participate in the review process being undertaken by the Commission, both in responding to its June 2015 Consultation Paper and the Stakeholders Roundtable in Melbourne on 29 July 2015.

In this submission below we provide responses to questions raised by the Commission on those matters having application to members of Australian Collectors & Debt Buyers Association (ACDBA) or where we have a perspective to advance for consideration by the Commission.

- 1 What changes or additions would you make to the information presented in Table 1 (pages 23–26) and Table 2 (pages 31–32) regarding the purposes of infiltration? You may wish to comment on occupations or industries that are not listed in Tables 1 or 2.

**RESPONSE:** No comment

- 2 Is the draft model for assessing the risk of infiltration (pages 32–37) a helpful way to assess the risk of organised crime group infiltration of lawful occupations and industries?

**RESPONSE:** No comment

- 3 What changes or additions would you make to the draft model for assessing the risk of infiltration (pages 32–37)?

**RESPONSE:** No comment

- 4 Having regard to the regulatory tools described in Chapter 4, which regulatory tools are, or might be, useful in addressing each of the risks identified in the draft model for assessing the risk of infiltration (pages 32–37)?

**RESPONSE:** No comment

- 5 For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:

- (a) a traditional occupation or industry regulator such as the Business Licensing Authority
- (b) Victoria Police
- (c) both a traditional regulator and Victoria Police?

**RESPONSE:**

Below we elaborate on some of the advantages and disadvantages on alternatives for regulatory responsibility:

Traditional occupational/business regulator

- Advantages include:
  - Potentially if probably resourced and there is continuity of competent and trained staffing who understand the occupations and business of the collections industry, a regulatory regime could be handled by such an agency
  - Such an allocation for responsibility would offer a clear destination for enquiries from the industry and those seeking to join the industry as well as for the receipt of any complaints against licensed persons/businesses
  - Some aspects of assessing whether an applicant meets a “fit and proper person” test such as conducting searches to determine an applicant’s history of any bankruptcy/insolvency is probably better aligned to the skill sets and experience of such a regulatory agency rather than the Victoria Police
  - Complaints raised against licensed persons/businesses which relate to civil matters such as alleged breaches of the Australian Consumer Law are generally better aligned to agencies such as Consumer Affairs Victoria than to the skill sets, experience and interests of the Victoria Police
  - As noted above, complaints raised against licensed persons/businesses which relate to civil matters such as alleged breaches of the Australian Consumer Law are generally better aligned to agencies such as Consumer Affairs Victoria than to the skill sets, experience and interests of the Victoria Police
- Disadvantages include:
  - There is a risk that such an agency will assume bureaucratic processes which will have the adverse consequence for the collections industry of imposing unnecessary red tape and delays and if this was the case would be seen as an inappropriate and costly imposition

### Victoria Police

- Advantages include:
  - Some aspects of assessing whether an applicant meets a “fit and proper person” test such as conducting searches to determine an applicant’s criminal history is better aligned to the skill sets and experience of Victoria Police rather than with an occupational/business regulator
  - The Victoria Police with its spread of police stations open extended hours provides an effective network for the receipt of complaints against licensed persons/businesses
  - The skills and experience of the Victoria Police are better suited to investigating complaints and commencing actions against breaches by licensed persons/business rather than what might otherwise be available if regulatory responsibility was solely vested with an occupational/business regulator
- Disadvantages include:
  - The volume of activities handled by the large staffing of the Victoria Police could lead to regulatory responsibilities being handled by untrained or inexperienced staff and potentially without attaching appropriate priority to those responsibilities
  - The use of fully trained police officers is seen as a costly and inefficient solution for handling administrative aspects of a licensing regime

### Combination of Traditional occupational/business regulator & Victoria Police

- Advantages include:
  - Such a combination offers the best potentially offers the best solution for handling the responsibilities for a regulatory regime of the collections industry – the traditional occupational/business regulator could best handle the administrative tasks including the issuing of licences whilst Victoria Police could be tasked to the conducting of criminal history searches as part of the “fit and proper person” test for licence applications and additionally as appropriate tasked to investigate complaints against licensed persons/business which involve alleged criminal offences
- Disadvantages include:
  - A sharing of responsibilities unless very clear organisational structures, obligations and controls are introduced could lead to unfortunate delays between the two agencies and directly adversely impact upon and cost the collections industry such as for example Victoria Police not responding within an agreed timeliness to requested tasks and/or not responding promptly when tasks are followed up from the occupational/business regulator

6 If a regulator is required to prevent the infiltration of organised crime groups into an occupation or industry, how does this affect, or how might this affect, the pursuit of its other regulatory purposes and objects (whether positively or negatively)?

**RESPONSE:** No comment

7 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate entry into an occupation or industry (for example, by requiring would-be entrants to obtain a licence)?

## RESPONSE:

On the surface the requirement of a licence to new entrants to the collections industry appears a useful and sensible strategy, however, some caution for such an approach is warranted for the ongoing operational interests and success of businesses lawfully engaged in the industry.

Some jurisdictions (eg NSW) have regulatory regimes which license both the businesses and the individual employees and this has proven to be unwieldy, costly and impracticable for businesses in efficiently recruiting new employees due to the timelines associated with licensing processes.

The same jurisdiction ties licensing to applicants having achieved competency based qualifications but this is widely regarded as an unhelpful barrier as the available competency based training courses offer curriculum which is outdated and excessive for many of the employment roles in the industry which predominantly operate in specialty activities.

ACDBA as a general principle supports the concept of licensing of businesses which seek to enter the collections industry but does not support licensing of individuals seeking to be employed in the collections industry.

At this point, it is appropriate to explain that the industry in Australia has developed and specialised over the past 10-15 years such that business operations now fall into two distinct activities:

**Collections activities:** Involving no face to face contact with consumers – collections being conducted by telephone, typically in a call centre environment; and

**Field agent activities:** Involving actual face to face contact with consumers – typically these are the activities of field attendances to either collect monies or repossess security assets and for the purpose of process serving.

The Queensland jurisdiction has recognised the maturity of the collections industry into these distinct sectors and in its recent legislation for regulation of the industry have provided a negative regulatory scheme for those businesses engaged in collections activities (involving no face to face contact with consumers) and a positive regulatory scheme for those businesses engaged in field agent activities (involving actual face to face contact with consumers).

The use of a positive regulatory scheme allows for the inclusion of appropriate objective measures to determine whether an individual or business applicant meets a “fit and proper person” test. Such measures would include determining the bona fides of the applicant to ensure:

- In the case of business/corporate applicants, that there is no history of insolvency, external administration or phoenix activity in the 5 years prior to the application; and
- In the case of individual applicants, that there is no history in the 5 years prior to the application of:
  - Being an undischarged bankrupt

- Having been found guilty of any indictable offence involving crimes such as assaults, intimidation, theft or financial advantage by deception

The issue of prescribing and maintaining that employees have the necessary competencies for their work activities ACDBA believes should be vested in the employer having due regard and ultimate responsibility for the work to be performed by the employees.

- 8 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of any of the following:
- (a) positive licensing regimes
  - (b) negative licensing regimes
  - (c) registration schemes
  - (d) rules relating to the effective control of a business
  - (e) rules relating to who may be employed in a business
  - (f) rules relating to re-entry
  - (g) other entry-regulation tools that you would like to comment on?

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

#### **RESPONSE:**

Noting that many of the costs and benefits are well documented in the Consultation Paper, below we detail or elaborate on some of the costs and benefits of a number of those regulatory devices, we advise:

##### Positive licensing regimes

- Costs include:
  - Can involve unrealistically slow and tedious processes which are clearly disadvantageous for business and those seeking employment in the industry
  - Unrealistic requirements such as ill-matched and excessive competency based qualifications are costly and offer little if any benefits to industry businesses and employees and are often disregarded upon employment as businesses provide induction and ongoing training specifically relevant to their operations and the work performed by their employees
  - Typically due to the associated processes positive licensing involves significant licensing costs to business and individual applicants – such costs are ultimately passed onto consumers as part of the fees charged by the industry
  - Depending on the regulatory agency (whether police or business affairs department) there can be high costs in the regulatory agency learning and understanding the operations of the industry and in turn any inefficiencies of the regulatory agency stemming from poor knowledge and understanding imposes a greater cost burden upon business and individual applicants when dealing with untrained and inefficient regulatory staff / red tape
- Benefits include:
  - Validation of an applicant having met a “fit and proper” person test for the issue of a licence including validation of the individual applicant’s identity

- Proof of an applicant's status as a licensed person (through the issue of a credit card style photo ID licence) which can be produced upon request to persons with whom the licensee conducts business – this can be particularly reassuring to members of the general public
- The ability for a public register to be maintained by the regulator as to the location and identity of businesses and individuals licensed to operate in the industry and occupations – such a register limited to the full name of the business or individual and the corresponding licence number ought to be accessible online and fee free so those seeking to deal with a business or individual can verify the status of the licence issued

#### Negative licensing regimes

- Costs include:
  - The regulatory and others do not know who and where businesses and individuals are operating in the industry
  - Businesses and individuals do not undertake validation of identity or of meeting a “fit and proper” person test
  - As there is no licence issued to businesses or individuals in the industry this potentially creates costs and difficulties in establishing with the persons and businesses they seek to conduct business with as to their entitlement to undertake such activities
  - There is a potential high cost and risk to the reputation and status of those businesses and individuals legitimately conducting activities by the unregulated activities of businesses and individuals engaging in unsavoury and/or unlawful activities in the industry
  - Other stakeholders (Victoria Police, regulators, the industry's customers and members of the public) are potentially exposed to costs and/or risks
- Benefits include:
  - Barriers of entry to the industry by businesses and individuals is low
  - Costs to the industry are reduced by the removal of inefficient and redundant licensing processes and requirements as often encountered in positive licensing regimes

#### Registration schemes

- Benefits include:
  - We note that it is ACDBA's view a registration scheme would be a far preferable regulatory device rather than a positive licensing scheme for those businesses and individuals legitimately conducting activities in the collectors sector, that is, those in the industry undertaking essentially the telephoning debtors mostly in call centre environments and having no face to face contact with consumers  
The reasoning for such support is for the avoidance of the ongoing costs and inefficiencies in time which are often a consequence of the processes adopted by regulators when operating positive licensing schemes

#### Rules relating to the effective control of a business

- Costs include:

The past experience of some ACDBA members have included when being required to meet “close associate” tests exposure to very significant unnecessary costs and the inefficiencies of regulators demanding applicants meet such tests

A recurrent example is the situation of directors on boards of corporations or their parent corporation who are located out of jurisdiction including offshore and despite have no direct function in the day to day activities or the management of the applicant's business within the specific jurisdiction being required to attend the jurisdiction to be photographed and fingerprinted as a "close associate" of the licence applicant

- 9 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of group-based licence exclusions?

**RESPONSE:** No comment

- 10 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?

**RESPONSE:**

Potentially there may be some merit in monitoring however the ACDDBA urges caution in what requirements involving any regular or systemic monitoring being imposed upon businesses and individuals in the industry who are in the main acting professionally and lawfully as they pursue their legitimate business activities.

Already in the collections industry there is a burgeoning oversight of activities by a number of regulatory bodies including the Australian Securities & Investments Commission, the Australian Competition & Consumer Commission, state & territory Departments of Fair Trading, Police and in some cases by the Australian Stock Exchange and the Australian Prudential Regulation Authority.

Compliance obligations in the collections industry is high from such regulatory bodies and also in accordance with service level agreements entered into between businesses and their clients – any additional monitoring if warranted at all, should be light touch and low cost for the collections industry which in the majority acts lawfully, professionally and responsibly.

Legitimate and responsible businesses ought not be imposed with costs and processes which are in effect aimed at those acting unlawfully.

Any additional monitoring should only be introduced followed detailed consultation with the collections industry so regulators understand the actual likely cost and resource impacts of any imposed monitoring process.

- 11 When monitoring an occupation or industry in order to prevent or detect the infiltration of organised crime groups, what are the costs and benefits of any of the following:

- (a) short licence periods/regular licence renewals
- (b) a complaints-based model versus an inspection-based model
- (c) investigative powers (or particular investigative powers)
- (d) prohibited practices
- (e) record-keeping obligations
- (f) continuous disclosure obligations
- (g) other monitoring tools that you would like to comment on?
  - o Complaints raised against licensed persons/businesses which relate to civil matters such as alleged breaches of the Australian Consumer Law are generally better aligned to agencies such as Consumer Affairs Victoria than to the skill sets, experience and interests of the Victoria Police

Costs and benefits may apply to a range of stakeholders, including regulators, Victoria Police, business operators, business employees, and business customers.

**RESPONSE:**

Please refer to our general comments made in response to Question 10.

- 12 What are the most useful ways of detecting people (particularly organised crime groups) who are operating in a lawful occupation or industry without the required authorisation (such as a licence)?

**RESPONSE:** No comment

- 13 Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?

**RESPONSE:** No comment

- 14 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate the exit of people from an occupation or industry? Which tools are, or might be, useful for this purpose?

**RESPONSE:** No comment

- 15 Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome? Information-sharing arrangements can refer to information sharing between regulators and Victoria Police, between different Victorian regulators, between Victorian and interstate regulators, and between any other agencies that hold relevant information.

**RESPONSE:** No comment

- 16 Please comment on the extent to which regulatory tools that may be used to prevent the infiltration of organised crime groups into lawful occupations and industries may:

- (a) insufficiently protect the rights of people affected by decisions of the regulator
- (b) insufficiently protect the rights of any other stakeholder
- (c) impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review.

**RESPONSE:** No comment

- 17 In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries:

- (a) What issues are, or might be, better dealt with through legal responses other than occupation/industry-based regulatory regimes (including but not limited to the 'other legal responses' described at pages 66–68)?



- (b) What issues are, or might be, better dealt with through occupation/industry-based regulatory regimes rather than other legal responses?

**RESPONSE:**

- (a) No comment
- (b) Better dealing with issues

As mentioned at the Stakeholder Roundtable on 29 July 2015, a significant and ongoing issue for the collections industry is the failure of the States and Territories to introduce a regulatory regime based upon national harmonisation of licensing – ACDBA contends the absence of a system of consistent licensing across jurisdictions unnecessarily complicates the regulation of the collections industry and effectively works against the goals of achieving a fully compliant regulation of all participants in the collections industry in Australia.

As explained earlier, currently in the collections industry there are some jurisdictions with no licensing, others with negative licensing and others with positive licensing regimes. Persons moving from one jurisdiction to another, potentially by relying upon the opportunities of the Commonwealth's Mutual Recognition Act could transfer the entitlement of holding an existing licence issued by a less onerous licensing regime in one jurisdiction across state borders to qualify for a licence in a jurisdiction where the regulatory regime have higher obligations.

With transactions of the collections industry increasingly of a global nature and certainly routinely conducted daily on an interstate basis, national harmonisation of licensing is warranted.

With reference to our response to Question 7 above, we suggest the current Queensland regulatory regime for collectors and field agents is an appropriate and effective regulatory model for national harmonisation and best reflects the modern day realities of the collections industry.

We again thank you for the opportunity to make this submission for the Commission's consideration. If any additional information is required please contact the CEO of Australian Collectors & Debt Buyers Association Mr Alan Harries through the details listed on the letterhead.

Yours sincerely

**AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION**

Alan Harries  
CEO