



14 August 2015

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

By email: law.reform@lawreform.vic.gov.au

Dear Commissioners,

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

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.

We have had the opportunity to review the submission prepared and lodged by Australian Collectors & Debt Buyers Association (ACDBA) and support the perspectives detailed in that submission.

In this submission below we provide responses to questions raised by the Commission on those matters having application to our members and where we have an additional perspective to offer (beyond the submission made by ACDBA) 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

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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: The IMA supports the perspectives detailed in the ACDBA submission.

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:

The IMA generally supports the perspectives in the response included in the ACDBA submission and specifically lends strong support to the proposition that the collections industry in Australia has matured in recent past years to two very distinct sectors being:

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.

Given this specialisation of activities, the proposal of a negative licensing regime for those engaged in activities involving no face to face contact with consumers is very sound.

In particular, it should be appreciated that the majority of such work is undertaken in call centre environments where collection campaigns are routinely ramped up and down according to client assignment requirements – as a consequence this sector is often characterised by a high turnover of staff often engaged on short employment periods.

For these reasons a negative licensing regime allows businesses in the sector to respond to opportunities in an efficient and cost effective manner. All responsibility for training of staff should be vested in the business employing the operators as due to the limited scope of the work undertaken they already have systems providing for induction and ongoing refresher training of employees to detail the requirements and obligations of the work as well as the specific client requirements for calls undertaken with its customers.

A negative licensing regime for businesses undertaking collection activities involving no face to face contact with consumers might be supplemented by a light touch registration of those businesses so the relevant regulator is aware of which businesses and where located are engaged in the industry as well as potentially providing the opportunity for the relevant regulator to establish an online register that clients and consumers can without charge verify a specific business is registered to undertake such work.

Whereas, the actual work completed by businesses providing field agency services does involve actual face to face contact with consumers for such purposes as field collections, repossessions and process serving. Accordingly, a positive licensing regime which involves meeting a "fit and proper person test" is appropriate and warranted for businesses and individuals undertaking such activities as the issue of an ID photograph credit card style licence which can be produced upon request would facilitate the opportunity of consumers to be assured of the bona fides of the persons attending upon them and would be a system supported by those businesses and individuals attempting to go about their lawful business and occupations.

- 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:

The IMA supports the perspectives detailed in the response detailed in the ACDBA submission.

- 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:

The IMA supports the perspectives detailed in the response detailed in the ACDBA submission.

- 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?

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

RESPONSE: No additional response beyond the commentary detailed above.

- 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 ppbe, 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 yare, or might be, better dealt with through occupation/industry- based regulatory regimes rather than other legal responses?

RESPONSE:

The IMA supports the perspectives detailed in the response detailed in the ACDBA submission and in particular strongly supports the call and need for a system of national harmonisation of licensing for the collections industry in Australia.

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 IMA's CEO, Mr Alan Harries via the contacts listed on the letterhead.

Yours sincerely

INSTITUTE OF MERCANTILE AGENTS

Alan Harries
CEO