

Guidance for debt collectors



Consumers can owe money to businesses for a range of things:

- They might buy goods or services which are invoiced for payment later or paid off over time.
- They might borrow money from a business which lends money.

Sometimes businesses that are owed money by their customers hire a third party to collect the debts for them.

If your business involves collecting debts, you must comply with certain laws.

Are you collecting debt?

If you contact a debtor to request payment of a debt then you are a debt collector whether the debt is owed to you or another company.

In this fact sheet when we refer to a debt collector we mean a person or business who:

- takes steps to recover money that is owed to you
- has purchased consumer debt from a lender or service provider and you take steps to recover that debt
- collects debt on behalf of a lender or service provider on commission.

Legal basics

If your business collects debts, you have obligations under the Fair Trading Act 1986. If you offer consumer credit, you also have obligations under the **Credit Contracts and Consumer Finance Act 2003** (CCCF Act).

Take care:

- not to make false or misleading representations. Everything you say to a debtor must be accurate, and
- to treat debtors ethically and reasonably. You must not harass or coerce debtors to pay their debts.



Your obligations

Debtors must pay their debts and you have a right to collect what is owed under the terms of the agreement. But, the law includes rules about how you go about collecting that debt.

The Fair Trading Act makes it unlawful to make false or misleading representations when you collect debt. For example, it is unlawful to tell or imply to debtors that:

- you have taken steps that you have not taken – for example, that you have filed court proceedings in relation to the debt when you have not
- you will take steps that you do not intend to take – for example, that you will file court proceedings when you have no intention of doing so
- you will take certain steps when they are dependent on other approvals or processes – for example, that you will file court proceedings, when the final decision rests with your client and your client has not made that decision yet
- the debtor has obligations that they do not have – for example, that the debtor must pay costs that can only be awarded by the courts, and/or
- you are working for government agencies or the courts if you are not – for example, debt collection documents should not mimic court or other official notices or orders.

EXAMPLE

A debt collector misled a debtor by representing that it specialised in commencing legal proceedings and that it was in a position to immediately commence legal proceedings against the debtor when neither of these representations were true.

The threat of litigation was used as a method to recover the debt. This was misleading as the debt collector rarely commenced proceedings at all and was not in a position to do so immediately.

ASIC v Accounts Control Management Services Pty Ltd [2012] FCA 1164

It is also unlawful to harass or coerce someone into repaying a debt. It may be harassment and/or coercion to:

- misrepresent your intentions about how you will deal with the debt or what you are permitted to do about the debt as a means of pressuring the debtor to pay. If you have to follow a particular process before making a final decision about what action to take, you need to make this clear to debtors. When telling debtors what you intend to do next, you should only make clear and accurate statements
- threaten or intimidate debtors into paying the debt
- make unreasonably frequent attempts to contact the debtor, their family and friends, or make contact in a way that might cause embarrassment to the debtor
- contact the debtor at unsociable times of the day or at a time they have specifically asked you not to, and/or
- continue to demand payment from a borrower in circumstances where you know they have no ability to pay.

EXAMPLE

A debtor was medically unwell (with limited verbal communication), unable to work, reliant on a disability pension, and lived in care. The debt collector contacted them 60 times over four years to demand payment of a debt.

The debt collector represented that it would shortly commence legal proceedings to recover the debt if it was not paid. The debt collector had no plans of doing so, and there was no evidence that the debt collector's internal processes had been followed to initiate legal proceedings. The debt collector knew of the debtor's condition, living situation and inability to pay the debt. It was even noted on the debtor's file that they should not be called.

The court determined that the debt collector's multiple phone calls to the debtor together with the number and content of its letters was calculated to intimidate, demoralise, tire out, or exhaust the debtor. The debt collector's conduct amounted to harassment.

ACCC v Accounts Control Management Services Pty Ltd [2018] FCA 1115

Additional obligations if the loan relates to a consumer credit contract

A consumer credit contract is a contract where a consumer borrows money or defers payment for goods or services and where credit fees and/or interest are or may be charged, and/or a security interest is or may be taken.

If you are collecting a debt arising from an unpaid loan under a consumer credit contract, either because you are the lender or you are collecting the debt owing to the lender, you have additional obligations under the CCCF Act and must comply with the Lender Responsibility Principles. This means that even if you are not the original lender of the debt you need to:

- exercise the care, diligence and skill of a responsible lender in all your dealings with the debtor, and
- treat the debtor and their property (or property in their possession) reasonably and in an ethical manner.

You should read the [Responsible Lending Code](#) for further guidance about how to comply with these obligations.

The CCCF Act also contains provisions dealing with the steps you must take if:

- a debtor makes an application to vary their contract as a result of unforeseen hardship (see our [fact sheet on hardship applications](#) for more information)
- you are seeking to repossess consumer goods on default of a consumer credit contract (see our [repossession guidelines](#) for more information).



Compliance programmes

We recommend you have robust systems and processes in place for dealing with debtors and that these are followed diligently by you and your staff. Pay attention to:

- helping debtors understand the debt that is owed and how they can pay. It will also assist if you explain your role in collecting the debt
- how you and your staff interact with debtors – why, when and how, and what is documented about interactions with each debtor
- how you describe the consequences of not paying, or not paying on time. Make sure that you accurately describe what will happen, including what steps you are entitled to take to recover the debt. If a process needs to be followed before a decision can be made, make this clear to debtors
- having mechanisms for resolving disputes. You should have a clear and transparent process for resolving issues about disputed debts. For example, the process could set out the inquiries you will make about the debt and how this will be explained and evidenced to the debtor. It should also set out guidelines about and process for when you will refer a dispute to the Disputes Tribunal or the court for resolution
- adopting escalation processes for when your frontline staff encounter a disputed debt and/or an unhappy debtor. This might involve putting the debtor in touch with an appropriate person within your business to deal with the dispute



- how you treat debtors who are in financial hardship, during discussions about a repayment plan or varying contracts as a result of unforeseen hardship. You need to treat borrowers reasonably and in an ethical way
- your compliance with Privacy Act obligations. Debtors have the right to:
 - access the personal information you hold about them. This includes but not limited to, records of communication, documents about the debt or the debtor, the amount owed and how it is made up. You must respond within 20 working days of receiving a request for personal information. Your response should include a decision about whether you will be providing the requested information
 - correct any personal information you hold about them. If you refuse to make the correction, you need to inform the individual of your decision and explain your reasons for declining their request
 - have their personal information protected. Be careful about disclosing personal information to third parties, as you can only do this in some situations. Read more about your [Privacy law obligations](#).

Ensuring that you have appropriate processes in place will help you and your staff to understand your obligations to comply with the law, but also help you help the debtor to know what to expect.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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