

## ACCC &amp; ASIC - DEBT COLLECTION GUIDELINES

In October 2005, the Australian Competition & Consumer Commission (ACCC) and the Australian Securities & Investment Commission (ASIC) issued a new Guideline for Debt Collection (Guideline).

The Guideline targets collection agencies, debt buy out services, in house collection departments, solicitors, government bodies and creditors who use external collection agencies to collect debts.

Any business that engages in regular debt recovery actions should refer to the Guideline.

In summary, the Guideline outlines some important matters to be kept in mind by persons co-ordinating debt recovery actions: -

- Do not divulge any information relating to the debt unless you are speaking to the debtor directly. Information cannot be divulged to a debtor's spouse, partner or family or any un-related third party due to Privacy laws.
- Contact should only be made with a debtor if you have reasonable grounds for believing the person you contact is liable for the debt.
- Contact should only be made at reasonable hours, as set out in the Guideline.
- Frequency of contact designed to wear down or exhaust a debtor may constitute "undue harassment".
- Face to face contact should only be attempted after all other communication means have failed.
- Visiting a debtor's workplace should be a last resort unless the debtor is the proprietor or director of a business to which the debt relates.
- Do not contact a debtor directly if they have nominated a representative such as a financial advisor, community worker, solicitor, guardian or carer.
- Ensure that you maintain accurate, complete and up to date records of all communications with debtors and settlement outcomes

- Requests by debtors for information and/or documents must be satisfied. Failure to provide information may constitute misleading, deceptive and/or unconscionable conduct
- If liability is disputed, you must confirm the identity and liability of the debtor before pursuing collection activities
- Once payment arrangements have been agreed, you should not contact the debtor unless the debtor has failed to comply or there is a genuine alternative arrangement that would benefit the debtor
- Do not engage in conduct that is abusive, offensive, discriminatory, disrespectful, aggressive, threatening, misleading or intended to embarrass or shame a debtor
- Do not take advantage of any disability or vulnerability of a debtor
- Do not misrepresent to a debtor the consequences of non-payment of a debt

The Trade Practices Act 1974 and Australian Securities and Investments Commission Act 2001 both contain express prohibitions against the use of physical force, undue harassment, coercion, misleading and deceptive conduct and unconscionable conduct. ASIC and ACCC have powers to enforce and fine businesses who are guilty of these offences.

In general, it is clear that ACCC and ASIC have taken a specific interest in how past debt collection practices have been managed, and as a result, businesses need to take particular care in the future.

If you would like a copy of the Guideline or any further information on this topic, please contact Catherine Lucas from our office on 9230 6504 or [catherine.lucas@kreissonlegal.com.au](mailto:catherine.lucas@kreissonlegal.com.au) or Cynthia Maclou from our office on 9230 6505 or [cynthia.maclou@kreissonlegal.com.au](mailto:cynthia.maclou@kreissonlegal.com.au).