



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

9 June 2018

Attorney-General's Department
privacy.consultation@ag.gov.au.

Dear Sir/Madam,

Submission to Review of financial hardship arrangements

Our details

Name/organisation	Alan Harries, CEO Australian Collectors & Debt Buyers Association
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Publication of submissions

In meeting the Australian Government's commitment to enhancing the accessibility of published material, the Attorney-General's Department will only publish submissions to this website that have been submitted electronically. The following formats are preferred:

- Microsoft Word
- Rich Text Format (RTF)
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Confidentiality

Submissions received may be published on the Attorney-General's Department website, except where requests have been made to keep them confidential or where they relate to particular cases or personal information.

Would you prefer this submission to remain confidential? NO

Your submission

Please provide your response to the relevant questions in the discussion paper and submit it as an electronic Word document to privacy.consultation@ag.gov.au. Submissions must be received by **5pm AEST on 10 June 2018**.

Our Response

The Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009. Membership is voluntary and open to all debt collectors and debt buyers. Our members represent the majority of the collection market in Australia.

Included below are our responses to the consultation paper's questions relevant to our members' credit activities:

1. Is there sufficient certainty in how the forms of hardship arrangements discussed in this paper are currently treated in relation to consumer credit reporting? If not, what are the imbalances that are evident in the current system? That is, what are the reasons for change and why should hardship arrangements be included in the credit reporting system?

Yes - as has been noted elsewhere, a CCR system which doesn't deal properly with hardship will be flawed and ineffective. Furthermore, there is a great opportunity here for a legislated instrument to assist consumers in hardship and to provide guidance and cohesion to an area which is presently managed in a fragmented and incoherent way across the full spectrum of credit providers.

2. If the current mechanisms for how hardship arrangements (formal or informal) are reported are not effective to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected, how should this be addressed? Are there reforms that could be implemented within the current regulatory framework? Are there non-legislative options available?

An apparent obstacle here appears to be an underlying reluctance for consumers to have to share the fact they are in hardship and the reason for same. For example, the submission paper quotes this consideration being deferred previously due to a concern it might 'increase the risk that individuals may not seek hardship arrangements as permitted in appropriate circumstances' [refer Explanatory Memorandum, Privacy Amendment (Enhancing Privacy Protection) Bill, 2012, p 127].

While this is possibly a concern raised by consumer advocates, such a concern makes little sense from a credit provider's perspective, as raising the 'red flag' of hardship is in the interests of the consumer. Credit Providers will eventually become aware of an individual consumer experiencing hardship in any case, albeit after much effort and delay – which potentially further disadvantages the consumer and exposes the consumer to 'debt management' companies which take advantage of such vulnerable consumers.

It is appropriate to ask: isn't the fundamental purpose of the CR regime to make pertinent information available to Credit Providers so as to assist in the assessment of creditworthiness?

If a consumer is experiencing hardship and is denied credit because the hardship information had been included in the credit record, we should be asking: in what circumstances is the denial of credit in the best interests of the consumer versus being against the consumer's best interests and then deal with the latter situations (if any are actually identified).

There seems to be a prevailing assumption that all hardship reporting is anti-consumer and if this continues, then this topic will remain bogged down as it has since 2008.

3. Some of the matters to be considered in determining regulatory/non-legislative options for action include:

a. What hardship information should be covered, and why? How should informal arrangements/indulgences be addressed?

The difference is significant in legal terms but in practical terms the situations of informal arrangements and indulgences are very similar, and for all practical purposes should be treated the same way for the reason that the consumer's pattern of repayment etc is equally relevant.

b. Should information about the reasons for hardship (such as loss of employment or ill health) be included? If so, how will this information be used and would this mean different consequences for individuals depending on the reason for hardship? If credit decisions are to consider the reasons for hardship, why can't this information be obtained directly from the individual (or, with their consent, from the relevant credit provider)?

Yes such information should be included.

The information would be used to appropriately respond to consumers experiencing hardship with an understanding as to its cause and therefore its likely duration.

The latter point could be said of all credit reporting information, that is, it could be sourced from the individual or the relevant credit provider. It seems a very backward approach to leave some information accessible only by way of the costly and intrusive method of individual communications outside the credit bureau.

- c. **Should hardship information be a separate type of credit information which is separately reported and subject to specific rules, or should it be reported incidentally, as part of RHI? What is the appropriate relationship between hardship information and RHI?**

The Australian Retail Credit Association has indicated that assignees of accelerated debts (debt buyers) do not have sensible repayment history information to provide, which means that even if a debt buyer provides such information for its accelerated and assigned accounts it will not meet the standard required for reciprocity and, therefore, the debt buyer will not be entitled to receive repayment history information.

If hardship information was to be reported incidentally as part of RHI, a consequence is that the hardship information held by debt buyers is unlikely to be reported as their access for RHI is less than clear.

Debt buyers are potentially a very significant source of hardship information for consumers given their businesses mostly handle the accelerated accounts assigned from originating Credit Providers. Given the access issue to RHI for debt buyers, hardship information should be a separate type of credit information which is separately reported on the principles of reciprocity and subject to specific rules.

- d. **How will the hardship information be used and should there be any restrictions on the use of this information? Who should be able to access hardship information and in what circumstances?**

We cannot see any rationale for hardship information to be mandated for handling in a different way to how other CR information is accessed by Credit providers.

- e. What are the expected consequences for individuals about whom hardship information is reported? How might any risks arising from these consequences be mitigated?

Again, we struggle to understand what risks and consequences are being suggested in relation to the reporting of hardship information.

- f. Should there be other limitations or restrictions on the hardship information that is included in the credit reporting system? For example, should retention of the hardship information be limited (eg no retention once hardship period over)?

No.

- g. How is the inclusion of hardship information expected to operate in practice? For example, noting that most credit application processes are automated, what are the expected consequences of including hardship information in this context, and how are practices in industry around these matters to be made consistent so that consumers are not dis/advantaged depending on the credit provider?

We see no special case for the processes to be different to the way existing CR information, as well as RHI are handled for reporting purposes.

- 4. If financial hardship was included in consumer credit reporting, how would this impact credit providers' engagement with their responsible lending obligations:

- a. Where a credit provider is assessing a new application for credit where a consumer's credit report represents that the consumer has recently entered into a hardship agreement.

No comment.

- b. Where a credit provider has extended credit to a consumer (whether ongoing, or a single loan), and the consumer enters into a hardship agreement with another credit provider which is then reported on that consumer's credit report.

No comment.

- 5. Are there any other issues involving hardship and the credit reporting scheme that should be considered in the course of the review?

Please consider the framework of the National Hardship Register [NHR] (details available at <https://www.nhr.org.au/>).

The NHR is utilised by a majority of Financial Counsellors in Australia and has been operating successfully for the past 5 years.

If CCR did adequately incorporate the reporting of hardship information, it is likely then, that the NHR would not have been required, nor would it need to continue.

The NHR is a joint initiative between the Australian Collectors and Debt Buyers Association Limited and the community sector to address the serious issue of long-term and severe financial hardship experienced by a small but growing number of vulnerable consumers.

The purpose of the industry funded NHR is to protect those consumers who are experiencing long-term and severe financial hardship from unnecessary debt collection activity.

The NHR initiative addresses the long standing problem of inefficient information flow which prevents early resolution of situations where vulnerable consumers need assistance but debt collectors and financial service providers first need information to be able to understand and respond with such assistance. The solution centres on facilitating the flow of necessary information in a way that does not disadvantage the vulnerable consumer.

The NHR acts as an efficient and cost-effective mechanism for financial counsellors and industry to avoid futile debt collection activity involving debts for this group of vulnerable consumers.

Yours sincerely

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

A handwritten signature in black ink, appearing to read 'Alan Harries', with a long, sweeping underline that extends to the right.

Alan Harries
CEO