



5 December 2008

**By email: [calm@justice.vic.gov.au](mailto:calm@justice.vic.gov.au)**

Private Agents Legislation Consultation  
Consumer Affairs Legislation Modernisation Project  
Consumer Affairs Victoria  
GPO Box 123  
MELBOURNE 3001

Dear Mr Owens,

### **Review of the Private Agents Act Options Paper – Modernising Consumer Policy Framework**

The Consumer Action Law Centre welcomes the opportunity to comment on Consumer Affairs Victoria's options paper reviewing the *Private Agents Act 1966* (Vic) (the Act) and agrees with the paper that any benefits of the Act in its current form are limited. We believe the Act should be repealed. However, rather than introducing new state legislation at this stage, we support the strengthening and enforcement of existing laws in regulating the behaviour of debt collectors. Our comments are detailed more fully below.

#### **About Consumer Action**

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

#### **Private Agents Act 1966**

Consumer Action has three main concerns with this Act. These are:

1. Limited coverage of the Act over debt collectors
2. Effectiveness of the Act
3. Lack of enforcement of the Act

#### **1. Coverage of debt purchasers**

Consumer Action is concerned about the potential lack of coverage of the operations of debt purchasers in the current Act. The Act refers solely to agents and most of the 'debt collectors'

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we deal with in relation to our casework have purchased debt and hence are not an agent of the creditor.

## **2. Effectiveness of the Act**

We have also found that the Act has been ineffective in its aim in addressing debt collection harassment issues. This was best highlighted in the 1980s, when attempts by the community group Waltons Action Group (**WAG**) to use this legislation against the harassing tactics of a debt collector proved futile and ineffective.

In brief, Waltons operated a number of retail stores throughout the 1970s and early 1980s and it sold unfair, high cost credit to low income earners. When Waltons closed its doors in the early 1980s, it still had over 40,000 customers with debts which were passed on to debt collection agencies.

These consumers had a range of complaints against the agencies, including high pressure door-to-door collection techniques, the contacting of the debtor's family regarding repayment, threats of legal action resulting in imprisonment, reactivating written-off debts and charging in excess of judgment interest rates.

WAG was established to campaign against these practices and to help individual consumers of Waltons and its debt collectors. In 1988, it complained to the Registrar of Private Agents about the debt collecting practice of one of these debt collectors, Commercial Recovery Management (**CRM**), who was also operating without a license. Thanks to the pressure and investigative work of WAG, CRM was forced to apply for a license but to WAG's dismay the Registrar failed to object to CRM's application.

In frustration, the West Heidelberg Community Legal Service lodged a claim on behalf of WAG against CRM receiving their operating license and after a six day hearing the magistrate handed down his written decision in favour of CRM, granting it a debt collector's license and awarding costs of over \$8,000 against Gary Sullivan, a solicitor of West Heidelberg Legal Service.<sup>1</sup>

This case highlighted that the Act itself was ineffective in defending the rights of consumers and addressing debt collection harassment issues, and has had a chilling effect on any further attempts to address poor debt collector conduct using the Act.

## **3. Lack of enforcement of existing laws**

We believe that priority should be given to the enforcement of current laws. Many of the debt collection practices we see include breaches of existing laws such as the Uniform Consumer Credit Code, *Fair Trading Act 1999* (Vic), *Trade Practices Act 1974* (Cth) and/or *Australian Securities and Investments Commission Act 2001* (Cth) yet despite the existence of such laws, regulators often fail to enforce them. Indeed, past focus by regulators has been on only the most outrageous conduct, which sends a message that only the most grievous behaviour will be prosecuted. However, the action taken by the Australian Securities and Investments

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<sup>1</sup> Brown. C, 'Making Complaints – the experience of debtors and advisors', *Consumer Rights Journal*, May/June. Vol. 2 No.4 pp 13 -15.

Commission against GE was a positive step.<sup>2</sup> Our view is that regulators need to focus on enforcement of current laws, rather than introduce new laws at this stage.

If new legislation is to be introduced, it should be part of the *Fair Trading Act*, to ensure that it applies to the practices of any party that is involved in the collection of a debt.

We note however that one area that potentially may not be covered if the Act is repealed, is currently under section 38 of the Act, where collection agents are prohibited from charging debtors for the cost of collecting debts, with the exception of stamp duty and any legal costs fixed under a court order that are incurred. It is possible that in many cases current legislation does cover this problem – for example, representation that an additional amount is legally owed when, in fact, it is not, could constitute misleading and deceptive conduct. However, we would encourage Consumer Affairs Victoria to investigate the extent to which this issue requires a legislative response.

### **Mandatory Code for Debt Collectors in Fair Trading Act**

We do not support a mandatory code for debt collectors. As stated above, it is important that any regulation apply to all parties who may be collecting debts and this should be in the *Fair Trading Act*.

### **Options**

- i. Licensing option 4: No industry-specific legislation for collection agents

Consumer Action supports the repeal of the Act and for consumer protection from undue harassment from debt collectors to be derived exclusively from the *Fair Trading Act* (and equivalent Commonwealth legislation).

- ii. Practices option 1: Maintain self-regulatory guidelines with respect to debt collection practices

We favour Option 1, but with more focus by regulators on enforcement of existing laws.

Should you have any questions, please contact me on 03 9670 5088.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**



Carolyn Bond  
Co-CEO

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<sup>2</sup> See: <http://www.fido.gov.au/fido/fido.nsf/byheadline/08-106+ASIC+acts+on+GE+Money%27s+insurance+and+debt+collection+practices?openDocument>