Australian Receivables Ltd
ABN 96 103 234 653

AUSTRALIAN RECEIVABLES LIMITED
an NCO Company

REACT BUT DON'T OVERREACT

An article in the May issue of Credit Management in Australia, by a Melbourne based collection agency CEO, raises a number of important issues regarding recent actions taken by the ACCC, but draws some conclusions which may create unnecessary concern.

The article reminds us that in a consent judgment to a Trade Practices Act action against a Victorian solicitor, by the ACCC, the Court underlined a number of important and fundamental, details relating to collection strategy and conduct.

Those of us, who have been in this industry for any period of time, understand that it is inappropriate to threaten any action which will not, or cannot, be taken. It is likewise inappropriate to use documents which purport to be, or resemble Court documents. In other words, we must not mislead the recipients of the letter into believing that we are going to take some action that we cannot, or will not, or that we are entitled to do things that we are not, or cannot.

None of this is new, although some new operators in this now unregulated (Victoria) industry, seem to have stepped over the boundaries. However, the outcome of this action, and the consent judgment, as highlighted in a letter circulated to the industry from the ACCC, do not involve major change.

What is important to understand, is that the ACCC is not preventing collection agents or solicitors from writing to debtors advising them of the consequences of non payment, but is underscoring the fact that we must be accurate in what we say. We cannot say legal action will be taken, if no such instructions are in hand. We cannot say Judgment will be entered, when we know we must first apply to the Court for an order, and clearly, such an order will only be granted by the court within the rules, including that the defendant has not lodged a defense.

In relation to the 'Do Not Call' legislation introduced last year in Victoria, it is also observed that consumer groups will 'get the message out' that all you need to say is "Do not call me again". The legislation that is referred is specifically Victorian. The legislation also states that any request that the debtor not be contacted, be in writing. In introducing this legislation, it is understood to have been the Governments intention to reduce the claims of harassment by collection agents and others, by giving the debtors an option to not be contacted, and to have the matter determined through legal proceedings. The unintended consequences of this legislation are, that in the absence of the ability to contact a customer regarding an overdue account, a creditor of whatever persuasion, has only one option in pursuing the debt, and that is to institute legal proceedings, adding to their claim the significant costs associated with that action. Nonetheless, this is an acceptable, common, and effective strategy. Not being able to contact a few debtors by telephone, is not going to bring the collection process or call centre to a stand still. It is also not going to impact contact made with Debtors outside of Victoria, who do not have access to this option.

One of the associated issues that this recent case raised, has been the issue of costs added to solicitor's letters of demand. Some of you may be aware, that in Victoria this practice was discontinued, or should have been, following revised guidelines from the Law Institute, issued in 2007. It is however apparent that many collection agencies and solicitors continue to add costs to their letters of demand, whether or not their clients have a legal or contractual right to these costs.

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This matter causes great concern in the community and across the industry, and while a very good and strong point is made in the article I am referring to, about changes to terms of trade, we suspect that many clients and agencies are at risk, adding these cost without the appropriate protections in place, and contrary to other specific legislation in other States.

Regards,

Paul J Cooney
Managing Director