6 December 2011

Debt Collection Consultation

Consumer Affairs Victoria

Policy and Legislation Branch

GPO Box 123

Melbourne VIC 3001

By email: debt.collection@justice.vic.gov.au

Dear Sirs,

**CONSULTATION – DEBT COLLECTION HARMONISATION REGULATION**

The Institute of Mercantile Agents (IMA) welcomes the Debt Collection Harmonisation Regulation Review (the Review) and this opportunity to provide its views on an appropriate regulatory environment for collectors and field agents.

The IMA an industry association established 50 years in Australia represents nationally businesses engaged in collections, investigations, process serving and repossessions.

Consequently, our members span both the Collections and Field Agents sectors, with each sector having consistent, but slightly different requirements, on achieving harmonisation,

Our members in the Collections sector support **Option 4** for mandatory exclusion requirements or negative licensing as they strongly believe they demonstrate the professionalism demanded both by regulation under other laws and in gaining and retaining the commercial contracts under principal and agency arrangements.

In the alternative, should agreement between the states and territories not be reached for adoption of **Option 4**, then from the perspective of IMA members engaged in the Collections sector the only other viable option to provide for effective national harmonisation is through a separate national licensing Act.

This approach, being **Option 5** is also the preferred option of IMA members engaged in the Field Agents sector. Importantly, **Option 5** would allow for the slightly different requirements of both sectors.

Please find attached our submission addressing the Review’s Options Paper. The IMA would welcome the opportunity to meet with CAV and/or the Ministerial Council of Consumer Affairs with the view of the establishment of national harmonisation of debt collection regulation being achieved as a matter of high priority.

Yours sincerely,

**INSTITUTE OF MERCANTILE AGENTS**

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Executive Director

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**Executive Summary**

The Institute of Mercantile Agents (IMA) represents both the Collections and Field Agent sectors. As our statistics show (please refer to *Our Members*, page 6), the majority of our members are small businesses of less than 5 staff members. The majority of businesses have been established more than five years, have modest annual incomes and negligible complaints.

While many small businesses in Australia fail in the first 2 years, our members demonstrate both sound business management and the professionalism to obtain and retain business under the principal and agency arrangements under which the sector works.

Because of this, our members do not believe there is any market place misfunction that warrants licensing at all. In the main, industry standards are set by the principals who engage our members (e.g. conduct standards, trust funds etc) and additionally by a range of market practices and consumer protection legislation. Additional industry specific licensing regimes only duplicate other legislative and commercial obligations.

However, our Field Agent members see value in a positive licensing regime, as it provides debtors and principals with confidence the government has some oversight of the integrity of those involved in face to face consumer contact. Our members find debtors, in particular, are more comfortable dealing with a field agent who has met government licensing standards and can demonstrate this through the provision of a government issued licence.

Consequently, we support different regimes for the Collections and Field Agents sectors. Our collections members support the position advocated by ACDBA in its submission that **Option 4** for mandatory exclusion requirements or negative licensing. Our collections members view this as most appropriate for this sector which clearly demonstrates professionalism and is subject to both the requirements of the principals who engage them and a range of other laws.

However, our Field Agents members support **Option 5**, a national licensing regime which includes the concept of licensees meeting similar standards to those under the NCCP licensing regime.

We do not see these positions as being inconsistent. They simply reflect the significant differences between direct and indirect debtor contact. For the Field Agents, a physical licence allows debtors to be confident they are dealing with someone who is authorised to make field calls and collect the debts. For Collectors using technology to make collections demands, debtors have much more control over how they wish to manage the situation and can choose to negotiate or terminate the call, as they see fit.

In summary, we propose Collectors operate under a negative licensing regime and Field Agents be licensed under a national licensing regime.

Background on our industry and our rationale for this position follows.

Perspective

The IMA acknowledges the general summary of the industry landscape set out in Chapter 2 of the Options Paper is, in the main, reasonably accurate and, importantly, recognises the Australian collection industry has evolved in terms of service delivery into 2 distinct specialisations, namely:

1. Collectors; and
2. Field Agents.

Whilst both groups are involved in collection activities to differing extents, the real difference is that in the current day industry Collectors generally have no face-to-face contact with debtors whereas Field Agents (process servers and repossession agents) do have face-to-face contact with debtors.

IMA members are engaged across the whole spectrum of the Australian collections industry as Collectors and Field Agents.

The IMA acknowledges another industry association, the Australian Collectors & Debt Buyers Association (ACDBA) as acting in the interests of its members engaged as Collectors involved in contingent collections and/or debt purchasing. Further, the IMA supports the approach taken by ACDBA in its submission to the Review in respect to possible regulatory options for Collectors.

In this submission, the IMA notes its perspective for possible regulatory options for both Collectors and Field Agents – in respect to the former speciality, the perspective will be mostly in support of the ACDBA submission, whilst in respect to the latter speciality, the perspective detailed herein shall be to address the considerations for regulatory models appropriate for Field Agents working within the Australian collections industry.

The IMA encourages regulators to use the consultative opportunity of this Review effectively to address the operational difficulties the collections industry has unreasonably endured for many years arising directly from the inadequacies and inconsistencies of existing state and territory licensing regimes.

Our Members

As noted above, IMA members are engaged across the whole spectrum of the Australian collections industry as Collectors and Field Agents (process servers and repossession agents).

In October 2011, following the release of the Options Paper, the IMA extended an invitation to all of its members to participate in an anonymous Online Survey to gather some current census information in relation to the businesses operated by its members.

By 7 November 2011, 109 members had responded in whole or part to the Online Survey representing a survey participation of 39.5% of members and revealing the following demographics:

Entities, turnover, activities & experience

|  |
| --- |
| **Type of entity:** |
| Sole trader | 17% |
| Partnership | 9% |
| Corporation | 73% |
| Public corporation | 1% |
| **Turnover:** |
| <$250,000 | 34% |
| $250,001 to $499,999 | 16% |
| $500,000 to $999,999 | 16% |
| $1mill to $1,999,999 | 15% |
| $2mill to $4,999,999 | 10% |
| >$5mill | 9% |
| **Activities (can be multiple):** |
| Collections | 76% |
| Process serving | 70% |
| Repossessions | 49% |
| **Years operating:** |
| <5 years | 13% |
| 6-10 years | 21% |
| 11-20 years | 37% |
| >20 years | 29% |

People & locations

|  |
| --- |
| **Number of offices:** |
| 1 office only | 80% |
| 2-10 offices | 20% |
| **Operating from:** |
| Residential premises | 35% |
| Commercial premises | 65% |
| **States of operation:** |
| NSW | 31% |
| QLD | 28% |
| Victoria | 20% |
| WA | 10% |
| SA | 7% |
| NT | 1.5% |
| ACT | 1.5% |
| Tasmania | 1% |
| **Number of employees:** |
| 1 | 16% |
| 2-5 | 41% |
| 6-10 | 21% |
| 11-20 | 7% |
| 21-50 | 12% |
| 51-100 | 0% |
| 101-200 | 1% |
| >200 | 2% |

Member demographics

* 81% of survey respondents reported an annual turnover (not profit) of less than $2 million p.a. – 34% reported a turnover of less than $250,000 p.a.

* 87% of respondents have worked in the industry for longer than 5 years - 66% have been in the industry for longer than 10 years.
* 80% of respondents operate from one office location only. 35% of respondents operate their business from residential premises.
* 85% of respondents have 20 or less employees - 57% have less than 5 employees.

Client-agent relationships

* Clients increasingly require agents to enter into Service Level Agreements (SLA) as to the terms of the work to be undertaken including conduct requirements: 80% of respondents enter into formal SLAs with clients.
* Clients similarly are requiring agents to submit to onsite audits by clients: 34% of respondents already have that experience. Those respondents also report their clients require the agents to submit to IT penetration testing to validate the security of the agent’s online systems.
* Agents report clients are also increasingly expecting online access to the agents system: 41.5% of survey respondents have received such client requests.

Complaint handling:

* 74% of respondents reported having an established written complaints handling policy in their business.
* 78% of respondents reported keeping a register of complaints received.
* 9% of respondents report being members of an ASIC approved External Dispute Resolution (EDR) Scheme.
* Respondents reported a total of 330 complaints in respect to alleged conduct breaches being received for the year ended 30 June 2011:

|  |
| --- |
| Handled via: |
| Internal Dispute Resolution | 94% |
| External Dispute Resolution | 4.5% |
| Regulator | 1.5% |

* 80% of respondents reported no complaints in respect to alleged conduct breaches being received for the year ended 30 June 2011.
* 80% of respondents hold Professional Indemnity (PI) insurance cover, with indemnity limits broken down as:

|  |
| --- |
| Indemnity limits: |
| Under $1 mill  | 7% |
| $1 mill  | 15% |
| $2 mill | 36% |
| $4 mill | 1% |
| $5 mill | 23% |
| $10 mill | 14% |
| $20 mill | 4% |

* In the 12 months to 30 June 2011, the survey respondents noted a total of 4 claims only made pursuant to PI cover.
* 4 respondents reported receiving for the year ended 30 June 2011 a total of 14 notifications from industry regulators alleging some breach of statutory compliance obligations

	+ 1 respondent had 8 notifications with the current status of those matters being pending;
	+ The other 6 notifications were advised by respondents as having been dismissed by the regulators.

Collections Sector

As noted earlier, the Collections sector principally involves no face-to-face contact with consumers. Many of the businesses presently engaged in contingent collection work operate within environments which are highly technologically geared, including:

1. Specialist collections software which includes full audit trails of all activities undertaken in respect to individual account transactions;
2. Call recording of all interactions with consumers in respect to outstanding accounts; and
3. Automated telephone systems.

Such commitment to technology reflects a significant capital investment for each of the businesses and ranges to being very huge investment in the case of those members with larger scale operations.

Members operating in contingent collections in Australia vary from one person businesses through to publicly listed corporations employing in excess of 650 persons.

It is important in any discussion on regulation of the Collections sector that stakeholders understand the true situation of contingent collections.

In every case, under contingent collections, accounts being collected (the debts) are owned by the original credit provider who has engaged the collector to act strictly under a “principal and agent” agreement to attempt to recover the outstanding account.

Almost without exception in the modern day industry, service level agreements between the agent collector and its principal creditor specify what the collector is required to do on behalf of the creditor - such agreements vary from a simple terms of engagement letter through to complex prescriptive legal documents.

Although the overwhelming majority of members operate as a single office business, the nature of collections within Australia is that creditors within one state routinely have clients scattered right across Australia and, in the event a consumer does not pay his or her account, a collector located in one state may be engaged to follow-up payment from consumers located interstate. This explains why many collectors are obliged from time to time to undertake work in multiple jurisdictions across Australia.

The situation of collections being undertaken from one state across multiple jurisdictions wasn’t contemplated when the current state and territory licensing regulations for collectors were first established nearly 50 years ago – collections and commerce, in general, were then simpler and more straightforward.

A recent IMA Online Survey of members[[1]](#footnote-1) reveals the following characteristics of member businesses engaged in the provision of collection services:

* 83% of respondents exclusively do contingent collections
* 81% of respondents operate a trust account
* 59% of respondents encourage debtors to make payments on debts owing direct to their clients
* 71% of respondents utilise specialist collection software to run the operations of their business and 96% of those respondents have access to a full audit trial within their collection software to verify the activities undertaken in respect to the collection of individual accounts

The following statistics about members involved in the provision of collection services for the financial year ended 30 June 2011 were revealed by the survey[[2]](#footnote-2):

Collection activity

* 63% of respondents each had less than 1000 open collection files
* 19% had more than 1000 but less than 10,000 open collection files
* 15% had more than 10,000 but less than 100,000 open collection files
* 3% had more than 100,000 open collection files

The above statistics confirm that many businesses operating as contingent collectors in Australia are small business enterprises. The larger agencies typically operate with telephone call centres and multiple offices locations and are mostly also members of ACDBA.

Contacting debtors:

Collectively the respondents told us they had a total of over 24 million contacts with debtors in the year ended 30 June 2011 made up as:

* 62.5% by telephone
* 34% by letter
* 3% by door knock
* 0.5% by email

Field Agents Sector

The Field Agents sector involves face-to-face contact with consumers.

Field Agents are tasked to attend to the activities of field calls, process serving and repossessions as part of the collections process. This necessarily requires attendance at addresses (residential, places of employment and/or business premises) for the purpose of meeting with consumers in respect to their accounts.

The nature of the face to face contacts with consumers by Field Agents is very varied. Some examples are included at Annexure A. In many of these situations, Field Agents are required to communicate and deal with consumers experiencing financial distress and/or other emotive situations.

In every single transaction of a Field Agent with a consumer, he or she acts pursuant to a "principal and agent” agreement to undertake the activities on behalf of the principal creditor.

Service level agreements between the agent and its principal creditor specify what the Field Agent is required to do on behalf of the creditor. Such agreements vary from a simple engagement letter through to very complex prescriptive legal documents, detailing the conduct requirements.

Importantly, it is a long standing situation any consumer aggrieved by the actions of a individual Field Agent has the right to complain to the principal creditor (such party being known to the consumer concerned), obviating the need for introduction of any artificial mechanism such as membership of External Dispute Resolution Schemes by Field Agents.

A recent IMA Online Survey of members[[3]](#footnote-3) reveals the following characteristics of member businesses:

* 80% of respondents operate from one office location only

* 35% operate their businesses from residential premises
* 78% have 10 or fewer employees
* 66% have an annual turnover (not profit) of less than $1 million p.a. - 34% have a turnover of less than $250,000 p.a.

The statistics confirm businesses operating as Field Agents in Australia are predominantly small business enterprises.

The experience of persons operating the businesses in the sector was revealed by the survey as being significant. 87% of respondents had been in business for longer than five years with 29% operating their businesses for over 20 years, 37% for 11 - 20 years and 21% for 6 - 10 years. These statistics confirm the overwhelming maturity and experience of persons operating Field Agents businesses in Australia.

The small business nature of Field Agents is further illustrated by reference to information gathered in the recent Online Survey of members[[4]](#footnote-4) with respect to the number of assignments handled by their businesses in the financial year ended 30 June 2011:

field agents (being agents attending to field calls and process serving activities):

* 45% handled less than 500 assignments
* 8.5% handled more than 500 but less than 1000 assignments
* 29% handled more than 1000 but less than 5000 assignments
* 17.5% handled more than 5000 assignments

repossession agents

* 67.5% handled less than 500 assignments
* 14% handled more than 500 but less than 1000 assignments
* 14% handled more than 1000 but less than 5000 assignments
* 4.5% handle more than 5000 assignments

Over 60% of businesses, who responded to the survey and engaged in work as field agents or repossession agents, reported utilising specialist industry software to run their business operations with over 94% of those respondents having access to a full audit trail in their industry specific software to evidence the work undertaken on individual assignments.

Regulations and Business

The IMA shares with ACDBA its concerns about the existing regulatory models in place across the state and territory jurisdictions, including:

* inconsistent licensing requirements and standards across jurisdictions;
* licensing overlay for those regulated under the NCCP Act;
* inconsistent conduct requirements across jurisdictions;
* unwarranted intrusion into commercial arrangements between businesses;
* inappropriate, restrictive and expensive training delivery requirements which ignore workplace training; and
* administrative inefficiencies across all jurisdictions.

As evidenced by the Options Paper, the case is well made that a streamlined national approach to regulation removing costly, artificial and antiquated regulatory requirements is warranted for both the Collections sector and the Field Agents sector.

Business and corporate behaviour generally is already well regulated in Australia. Those regulations directly impact upon, and shape, the businesses operating in the Collections and Field Agent sectors.

There is no evidence of market failure or of the industry failing to be good citizens with respect to business and corporate regulatory requirements and expectations.

Licensing options

The two sectors in our membership request differing approaches to the regulatory regime, given their different functions. While both sectors agree their conduct standards are already well regulated and professionalism apparent to the stakeholders, the Field Agents’ experiences indicate consumers have more confidence in agents who can provide a physical, photograpic licence.

The production of a licence is hardly sufficient grounds for a licensing regime, however, given the significant impact it has on the debtor/field agent relationship, and the subsequent collection of the debts, our members believe Field Agent only licensing is warranted.

Alternatively, another mechanism may provide a better outcome for providing the confidence required in Field Agent activities. We have not explored those options in this submission but would be happy to consider this further should the negative licensing regime be the outcome of the Review.

## 1. The Collections Sector

In respect to the **Collections** sector, the IMA supports the position advocated by ACDBA in its submission that **Option 4** for mandatory exclusion requirements or negative licensing is the most appropriate for this sector. The sector clearly demonstrates overwhelming professionalism and is well regulated under a range of other laws which provide for market practices and consumer protection conduct.

In the alternative, should agreement between the states and territories not be reached for adoption of **Option 4**, then the IMA is of the view, the only other viable option to provide for effective national harmonisation of regulation of the Collections sector is **Option 5**, deemed licensing via a separate national licensing Act. Importantly, such an approach, which we will discuss in more detail below, can be scalable and accommodating of differences in obligations depending upon the operational scope of the specific business.

## 2. The Field Agents Sector

The Field Agents sector, being concerned with face to face contact with consumers, overwhelmingly supports retention of a positive regulatory approach which provides debtors with confidence they can trust the agent who calls on them. The approach includes the concept of licensees meeting a “fit and proper person” test for the work to be undertaken. Retention of such licensing standards will provide all parties (consumers, creditors, agents and regulators) with confidence in the conduct of those agents managing field calls.

Conceptually, our field agent members prefer a separate national licensing Act based on a licensing model similar to the NCCP regime and administered by a single national regulator. Different licence conditions could apply for those businesses engaged in the Collections sector and those engaged in the Field Agents. The NCCP licensing regime provides an indication of how different services can be managed under the one regime.

Maintenance of the Status Quo of existing state and territory licensing regimes under **Option 1** is, in the view of the IMA, totally inappropriate. Our members view it as being unfair and unsustainable as such regimes perpetuate inconsistency of existing licensing standards and obligations across state and territory jurisdictions which, as documented in the Review, vary from no regulations through to outdated and inefficient regulations.

The removal of the existing exemption for contingent collectors from the National Credit Act as proposed under **Option 2** is rejected as being implausible. Collectors engaged in activities outside consumer credit would not be regulated if the state and territory regimes were repealed or alternatively would still be regulated under the still inconsistent regimes of those jurisdictions.

Pursuit of **Option 2** does not advance national harmonisation of debt collection on any basis and potentially could prove anti-competitive by imposing an additional regulatory regime on those collecting specific debt types.

The national occupation licensing system (NOLS) under **Option 3** is not seen as being a viable solution at the present time for national harmonisation of the collection industry. Proceeding under this option which necessarily retains involvement and eventual agreement by all states and territories presents, in all likelihood, delays for extensive consultation and an attendant risk that any state or territory could choose to withdraw from the arrangements at any time.

Returning to deemed licensing via a separate national licensing Act pursuant to **Option 5** in the IMA's view, some of the principles for such a regime ought to include:

1. Business level licensing
	1. The business entity or organisation is the appropriate level for regulations rather than being directed at individual employees of a business as it is at the organisational level where all contractual arrangements are made and of course under Australian law, employers are responsible for the conduct of their employees and contractors.
	2. Individual employees are not in a position to influence business policy and management decisions and therefore should not be held accountable for any non-compliance arising from such decisions.
	3. Any effective licensing regime will recognise it is the obligation of the employing organisation to maintain its competence in undertaking its business activities.

Depending upon the nature of the business activities (whether engaged in the Collections or the Field Agents sector) together with the scale and complexity of the business operation, the activities undertaken and the roles performed by individual employees will ultimately scope what is required for each business entity to maintain its competence.

* 1. The concept of business entity licensing will necessarily require the identification of responsible managers for the business entity to ensure compliance with licence obligations by the entity.
	2. As Field Agents require a personal photographic licence, this can be achieved by the licensed business undertaking appropriate probity checks on the staff members concerned, with the national regulator then issuing the licence on the basis of the licensee’s verification appropriate standards are met. It would then be incumbent under the licence for the licensee to notify the regulator of any changes, similar to the NCCP credit representatives arrangement.
1. Responsible managers
	1. Essentially every member’s business have person(s) who could be identified as “responsible managers” for the purposes of the business licence – those persons might be the actual business proprietor or else the overall manager of the business unit.

* 1. The concept of what might be appropriate criteria for responsible managers to meet has already been identified by ASIC within the context of its regulatory responsibilities pursuant to the NCCP regime - it would not be a significant task to adjust such criteria for relevance to the Collections sector and the Field Agents sector and embracing such concepts as:
		1. Appropriate qualifications relevant to the member’s business;
		2. An appropriate period of problem free experience in the area of the member’s business.
1. Maintenance of organisational competence

In order to ensure a licensed business maintains its organisational competence at all times will require measures to be in place for:

* 1. Periodic review of organisational competence or whenever responsible managers for the entity change;

* 1. The maintenance and updating of qualifications and experience of responsible managers - reference to the type of provisions for such obligations imposed upon licensees under the National Credit Act provide appropriate guidance – for consistency possibly could be 20 hours per year, although this is onerous, excessive and unnecessary in a less complex legislative environment; and
	2. The keeping of records evidencing review of the organisational competence in the business and the steps it has taken to maintain such competence.
1. Training of employees

IMA members support the maintenance of mandatory training of employees but regard the standard should be the same for all states and territories and, importantly, that training should be practical and directly relevant to the duties being performed by the individual employee.

Whether engaged in the Collections sector or the Field Agents sector, IMA members are aware of their obligation to ensure their employees are appropriately and adequately trained and competent to engage in the activities undertaken on behalf of their business. The reality is that the competence of employees is crucial for the ongoing commercial success of each of the members’ businesses.

The party best equipped to determine what is appropriate to the initial and ongoing training of its employees to ensure maintenance of organisational competency is, in our view, the individual employer. This is entirely consistent with how ASIC has imposed training obligations upon licensees under the NCCP regime.

The IMA, through its annual National Conferences for members and the bi-monthly publication of the AGENT magazine for the industry, supports the industry by providing opportunities for members to undertake training directly relevant to their business occupations.

The IMA supports the industry itself establishing appropriate training standards rather than the imposition of such standards by legislative effort.

1. Licensing of field agents

There is a clear policy rationale to support the continuation of licensing of persons who actually undertake duties as field agents. These are the people in the industry who have actual face-to-face contact with consumers.

Under the NCCP regime, there is a secondary licensing level of licensed credit representatives attached to an Australian Credit Licensee. A similar situation should apply for the individuals employed or contracted by members to attend to duties as field agents.

As mentioned earlier, the Field Agents sector supports a positive regulatory approach which includes the concept of licensees meeting a “fit and proper person” test for the work to be undertaken. Retention of such a licensing standard will protect all parties - consumers, creditors, agents and regulators.

A criticism of field agents generally, post the recent introduction of a negative licensing regime in Victoria, is that agents in that jurisdiction no longer are provided with a licence as evidence of their bona fides to deal with members of the public in respect to their occupational duties, namely field calls, process serving and repossessions. This presents operational difficulties and unnecessary conflict when dealing with individual consumers.

To overcome such short comings presented by the negative licensing regime, the IMA has issued affected members in Victoria with a credit card style colour photo ID card which lists the field agent’s name, business occupation, business name and contact numbers.

Members have subsequently advised this effective identification scheme has improved their ability to quickly interact with consumers and gain their cooperation by proving their legitimate basis for dealing with them in respect to outstanding accounts for the purposes of field calls, process serving and repossessions.

To address any ill founded concerns about administrative efforts required to undertake verification needed for licensed field agents to meet a "fit and proper person" test, the IMA notes there are commercial organisations such as Verify (a division of Veda Advantage) which on a “user pays” basis could provide an online portal for licence applicants to provide to the regulator evidence of such matters as:

* 1. criminal history check;
	2. bankruptcy search;
	3. credit reference search; and
	4. training qualifications.
1. Code of conduct

The ASIC/ACCC Debt Collections Guideline has been widely adopted by the industry for voluntary industry compliance within established conduct standards.

Whilst the Guideline has no legislative effect, the industry (both the Collections sector and the Field Agents sector) has, in fact, adopted the conduct benchmarks for the reason the Guideline provides a level of compliance certainty.

Additionally, compliance with the Guideline is further enhanced by the majority of the service level agreements entered into by the Collections sector and Field Agents sector and their respective clients adopting the Guideline as the minimum conduct expectations.

The IMA supports ACDBA in its call for a non-prescribed Code of Conduct which we also see as being potentially as simple as adopting the ACCC/ASIC Debt Collection Guideline and, as an association, requiring our members to comply with it.

The industry ought to establish a Code of Conduct rather than any code being prescribed by law. This will ensure currency and relevance to industry activities.

Conduct options

Please see comments above.

Trust accounting options

In preparing this submission, we provided some online tools[[5]](#footnote-5) to members to allow them to advise their preferences in respect to the various options.

Our members indicated:

* 54% of respondents were against abolishing mandatory guidance on trust accounts.
* 81% of respondents currently maintain trust accounts.
* 77% of respondents say even if mandatory trust accounts were abolished, they would continue to maintain a trust account as the proper and correct way in which to account for monies collected from consumers on behalf of principal creditors.
* 59% of respondents in accordance with service level agreements with client creditors encourage consumers to make payments on debts direct to the principal creditor.

The requirements for trust accounts should not be unnecessarily complicated nor adopt outdated methodologies. We submit the requirements at least require that:

1. Advice should be provided by the licensee to the regulator whenever a trust account is opened, closed or renamed.
2. Licensees be permitted to open trust accounts depending upon the service legal agreements with its clients in either the style “Licensee’s Name Trust Account” (for handling multiple clients) or where individual clients require a separate trust account in the style “Licensee’s Name Creditor’s Name Trust Account”.
3. Trust accounts should be audited at least once per year with a copy of an audit certificate prepared by a certified practising accountant provided to the regulator.

Complaint handling options

No response to this aspect of the Options Paper can avoid making the strong point that External Dispute Resolution involvements via ASIC approved schemes has no legitimate basis for a role in the Collections and Field Agents sectors given the “principal and agent” relationship which underpins all activities as collectors and field agents respectively.

Put simply, no agent has the power, or authority, under the terms of engagement to address or resolve a consumer's issue with the principal creditor. Instead all such matters must be referred back to the creditor concerned.

This essential limitation in the relationship renders any proposal that agents in the Collections sector and Field Agents sector be members of an EDR scheme as totally redundant.

A recent Online Survey[[6]](#footnote-6) of IMA members revealed:

* 74% of respondents have a written complaints handling policy.
* 78% of respondents keep a register of complaints received.
* Only 9% of respondents are members of an EDR scheme, being members who hold an Australian Credit Licence pursuant to the NCCP regime.
* 80% of respondents reported no complaints being received in respect to alleged conduct breaches for the year ended 30 June 2011.
* Respondents reported a total of only 330 complaints in respect to alleged conduct breaches being received for the year ended 30 June 2011 – such complaints were handled by:
	+ 94% internal dispute resolution
	+ 4.5% external dispute resolution
	+ 1.5% regulator intervention
* 80% of respondents hold professional indemnity insurance cover with indemnity limits as follows:
	+ 7% have cover of under $1 million
	+ 15% have cover of $1 million
	+ 36% have cover of $2 million
	+ 1% have cover of $1 million
	+ 23% have cover of $5 million
	+ 14% have cover of $10 million
	+ 4% have cover of $20 million

* Respondents advised that in the 12 months to 30 June 2011 a total of only 4 claims were made pursuant to professional indemnity insurance cover.

Given the majority of members have a written internal dispute resolution program there is little need to mandate the requirement. Under a negative licensing regime, the most likely outcome is the principals involved would require our members to have IDR in place before a contract is awarded. Regardless, complaints are always referred to the principal.

Under a national licensing regime for field agents, the IMA would support mandatory internal dispute resolution at least in accordance with the Australian Standard for Complaints Handling as being a reasonable requirement for licensees, despite the principal managing all complaints.

Administration options

Consistent with earlier comments, under the development of a licensing regime for Field Agents, the IMA supports **Option 2**, the transfer of administration to a dedicated debt collection regulator. It removes the jurisdication confusion that currently exists between ASIC and the ACCC.

The establishment of a national industry Act administered by a sole national regulator provides the opportunity to provide consistency and certainty for regime and the regulatory environment in terms of consumer protection and sector conduct.

Information standards

The IMA supports **Option 1**, maintenance of the status quo.

Educational requirements options

Please see comments above.

Future Consultation

The IMA looks forward to an opportunity of constructive discussion with CAV, the Ministerial Council of Consumer Affairs and other industry stakeholders in respect to initiatives for national harmonisation of the debt collection industry.

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Annexure A Face to face contact with consumers

Field Agents are tasked to attend to the activities of field calls, process serving and repossessions as part of the collections process. This necessarily requires attendance at addresses (residential, places of employment and/or business premises) for the purpose of meeting with consumers in respect to their accounts.

The nature of the face to face contacts with consumers by Field Agents is very varied.

In every single transaction of a Field Agent with a consumer, he or she acts pursuant to a "principal and agent” agreement to undertake the activities on behalf of either a principal creditor or a principal lawyer.

Examples of assignments routinely handled by Field Agents across Australia include:

1. **As the agent representative of financial institutions taking possession of security goods and chattels such as a motor vehicle following the breach of financial agreements such as leases and/or hire purchase agreements.**

In such situations, following the financier’s efforts to bring the account into terms and the service of notice upon the customer, the agent is instructed to attend upon the customer to make a demand for the arrears on the account and costs and in the event of the customer being unable or unwilling to make payment or suitable arrangements to repossess the security motor vehicle.

In the event the vehicle is to be repossessed, the agent engages a third party towing contractor to attend and tow the vehicle away to a storage facility to await disposal by auction or retrieval by the customer upon payment of arrears and costs to the financier. The customer is invited to remove all personal possessions from the vehicle before the vehicle is towed.

1. **As the agent representative of financial institutions taking possession of property such as residential, commercial and industrial premises, following mortgage defaults.**

In such situations, following recovery processes handled by the financiers or its lawyers, the agent is instructed to attend the premises and to sign on behalf of the financier for possession of the property from the Sheriff/Bailiff who has attended to any eviction of occupiers, then attend to arranging and supervising a locksmith to change the locks and securing the property and documenting by way of inventory, photographs and/or video the condition of the premises and any items left behind by the former occupiers.

The agent also coordinates arrangements with the former occupiers in the event they require access to remove their items from the premises.

1. **As the agent for a financier or law firm to attend to the delivery of court process upon individuals or businesses.**

The rules for service vary from jurisdiction to jurisdiction and also depending upon the capacity in which the process is directed to the individual or business entity. The agent is required to properly identify the individual or business entity and effect service by personal delivery of the process in accordance with the specific court rules.

Process includes court and tribunal notices; statements of claim; summonses; subpoenas; applications for dissolution of marriage; applications for custody and/or property orders; bankruptcy notices; and creditor petitions.

As is apparent from the above examples, in many situations Field Agents do communicate and deal with consumers experiencing financial distress and/or other emotive situations. Their tools of trade include strong communication and negotiation skills with the use of tact, diplomacy and discretion.

Increasingly, our members find consumers are anxious about the bona fides of persons calling at their home, business or workplace to conduct business. The production of an industry licence evidencing the Field Agent is authorised to undertake such tasks as collections, process serving and repossessions quickly puts individuals at ease that they are dealing with appropriate and authorised persons and not being subjected to any scam.

1. Online survey of members conducted by the Institute of Mercantile Agents – October 2011 [↑](#footnote-ref-1)
2. Ibid [↑](#footnote-ref-2)
3. Ibid [↑](#footnote-ref-3)
4. Ibid [↑](#footnote-ref-4)
5. Online Tools for Options Paper available to members of Institute of Mercantile Agents – October 2011 [↑](#footnote-ref-5)
6. Online Survey of members by Institute of Mercantile Agents – October 2011 [↑](#footnote-ref-6)