



12 February 2021

Ms Claire McKay
Manager, Banking and Access to Finance Unit
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: creditreforms@treasury.gov.au

Dear Ms McKay

Treasury consultation on licensing debt management firms

The Australian Banking Association (**ABA**) supports the Government's proposal to licence debt management and credit repair firms. We believe that all Australians should be afforded consistent consumer protections, no matter which credit or financial services provider they choose.

For customers at risk of financial hardship, these consumer protections are particularly important. As the Senate Economics Committee has noted, the "unregulated provision of debt and credit repair services poses significant risks to vulnerable Australians".¹

Debt management and credit repair services are targeted at Australians at risk of financial vulnerability and can exacerbate or even cause financial hardship. There is a clear benefit to the community and the economy to ensuring that consumers do not fall victim to unsuitable or predatory credit practices in the debt management industry.

To enhance the proposed licensing regime, our members have made several recommendations below that are aimed at strengthening the consumer protections in the proposed licencing regime.

Background

A number of inquiries have found debt management firms have let their customers down by charging high fees, offering regulated services even though they are unlicensed, using high-pressure sales tactics, and providing little information about risks.² Some of the services they charge for, such as credit repair, can be readily accessed elsewhere for free.

The ABA is supportive of stronger regulation of the debt management industry. In 2020, we developed a common industry approach, in conjunction with consumer representatives, for when Australian banks should deal with debt management firms.³ The intent of the approach is to protect our customers by ensuring they are getting the right information from the bank at the right time, including information about free alternative services. This approach will be codified in the Banking Code of Practice as of 1 March 2021.

¹ The Senate Economics References Committee, *Credit and hardship: report of the inquiry into credit and financial products targeted at Australians at risk of financial hardship*, February 2019, p. 8

² For example, ASIC, *Paying to get out of debt or clear your record: The promise of debt management firms*, January 2016

³ This approach outlines the circumstances where a bank may refuse to deal with a debt management firm and instead communicate directly with a customer. It can be found here: <https://www.ausbanking.org.au/wp-content/uploads/2020/12/ABA-Guiding-Principles-to-DMFs-2020.pdf>



Recommended changes to licensing regime

Please find below additional recommendations to strengthen the proposed licensing regime.

Addition of a licensing obligation related to fees

As the Australian Securities and Investments Commission (**ASIC**) has noted, “Debt-management firms operate on a for-profit basis and charge consumers fees for their services, either upfront or on a ‘success’ basis. Fees can be very high, and the services can sometimes leave consumers already in financial difficulty worse off.”⁴

To prevent these practices, we suggest that the proposed licensing regime may be strengthened by including a new obligation that restricts firms from charging fees that are disproportionate to the services provided. This obligation should allow for ASIC to supervise the debt management and credit repair industry for fee structures that place Australians in financial vulnerability, including charging large upfront fees or placing caveats on people’s property for minor services rendered.

Case study: fee structures

Australian banks have limited visibility over the fee structures charged by debt management firms. However, we offer the following observations based on interactions with our bank customers that have engaged such firms.

Fee structures appear to be charged based on the complexity of the overall hardship situation of the customer. At times, ongoing fees can be between \$300 to \$700 per month. These fees can make up roughly half of the total repayments that a customer is obligated to pay each month to their various creditors, placing them into further financial hardship.

Minor suggested amendment

The ABA submits that sub-regulation 4B(1)(c)(i) should be amended to read, “make a complaint, *report* or claim to the credit provider, AFCA, ASIC or *other ASIC-approved Code governing body...*”. This is an important, albeit minor, amendment to recognise that firms can also advise consumers to make a report to the Banking Code Compliance Committee regarding the practices of subscribing banks.

Further action may be required

The proposed licensing regime is a positive step towards ensuring that Australians are protected from misconduct in the broader debt advice industry. We suggest further action may also be needed.

In particular, ABA members have observed that bank customers can be placed into financial difficulty as a result of dealing with debt management and credit repair firms for non-credit related debts. For example, the Energy & Water Ombudsman NSW has previously noted that debt management firms sometimes charge customers fees exceeding \$1000 for ‘misleading and incongruous services’ with relation to energy related debts.⁵

Similarly, the Australian Law Reform Commission has recommended that the practices of pre-insolvency advisors warrant further scrutiny.⁶ There have been concerns expressed that these advisors may encourage individuals and businesses in financial distress to engage in unlawful conduct, such as hiding or stripping assets and illegal phoenixing.⁷ The ABA is concerned that bank customers may continue to fall prey to inappropriate debt advice if this activity remains unregulated.

Our members support further consideration of regulating debt management and pre-insolvency advice services. In the meantime, we recommend active compliance and enforcement work from regulators on:

- point of sale conduct and quality of advice

⁴ ASIC, Handling complaints and paid representatives: ASIC provides financial firms with guidance, 27 August 2020

⁵ EWON, Supporting regulatory reform for Debt Management Firms, 1 July 2016

⁶ ARLC, Corporate Criminal Responsibility Final Report, April 2020

⁷ ARITA, Submission regarding Licensing debt management firms, February 2021



Australian Banking Association

- whether services are fit for purpose and delivered with due care and skill, as required by the Australian consumer law
- misleading and deceptive advertising, particularly targeted ads on social media, and
- unfair contract terms in debt management contracts.

If you have any questions regarding our submission, please contact me on (04)12 646 864 or jess.boddington@ausbanking.org.au.

Sincerely

Jess Boddington
Policy Director

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers.

We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.