

**Submission
No 22**

DEBT RECOVERY IN NSW

Organisation: Australain Bankers Associations' Inc.
Name: Mr Ian Gilbert
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The Hon Bryan Doyle MLA
Chair
Committee on Legal Affairs
Legislative Assembly
Parliament of New South Wales
Macquarie Street
Sydney NSW 2000

By email to: legalaffairs@parliament.nsw.gov.au

Dear Mr Doyle,

Inquiry into Debt Recovery in New South Wales

Thank you for your letter dated 11 April 2014 addressed to Ms Gail Kelly, Chair of the Australian Bankers' Association (ABA), inviting the ABA to make a submission to this inquiry.

We understand that you may have written similarly to a number of other ABA member banks. The ABA would be pleased to be able to provide this response on its members' behalves.

1. Introduction

The ABA is the national peak body representing banks that are authorised by the Australian Prudential Regulation Authority (APRA) to carry on banking business in Australia. The ABA's membership comprises 24 banks. The membership includes the four major banks, a number of former regional banks that now operate on a national basis and foreign banks that conduct either or both retail and wholesale banking activities in Australia.

The members operate on a national basis. Nationally consistent legislative compliance obligations enable banks to deal with their customers efficiently, consistently and effectively than if their compliance obligations differed between those jurisdictions in which their customers are located.

For market conduct regulation of banks and other financial institutions, the principal national regulator is the Australian Securities and Investments Commission (ASIC).

2. ACCC/ASIC Debt Collection Guideline

In 1999 the Australian Competition and Consumer Commission (ACCC) developed in consultation with industry and consumer advocacy groups a debt collection guideline entitled "Debt Collection and the Trade Practices Act". Subsequently, the ACCC and ASIC developed the guideline to become the joint ACCC/ASIC "Debt collection guideline: for collectors and creditors" (Guideline) to guide and assist creditors, debt collectors and debtors concerning aspects of the national regulatory regime governing debt collection.

The Guideline has been revised recently and the revised Guideline is due to be released in the near future.

The Guideline is intended, in part, to guide industry about compliance with a number of consumer protection laws including, for example, prohibitions on creditors and debt collectors engaging in undue harassment collection practices, unconscionable conduct and misleading and deceptive conduct. A debtor's rights to privacy are also reflected in the Guideline.

The Guideline also provides information to debtors about their responsibilities concerning payment of their debts.

The current Guideline states that it has been developed with particular reference to collecting debts from individual debtors. However, many of the laws and principles covered in the Guideline will also be relevant to the collection of corporate or business debts.

This nationally consistent approach covers the field of debt collection activities in connection with legislation that applies to those activities and helps to provide greater certainty of compliance with those laws for financial institutions and other businesses.

The ABA would seek to ensure that this national consistency in approach is maintained in the event that the Committee considers further or other measures are necessary.

If the Committee considers that further measures which would fall outside of the national coverage under the Guideline are appropriate, the ABA requests that it is given the opportunity to make further representations to the Committee taking into account the context of payments to or from non-customer third party services providers.

3. Other aspects of debt collection

3.1. Debt recovery legal system

The current arrangements in NSW for debt recovery through the NSW Legal system appear quite satisfactory and were greatly enhanced when the jurisdictional limit for the Local Court of NSW was increased from a maximum amount of \$40,000 to \$100,000. It is noted that there is a current proposal to implement the compulsory step of a pre-hearing conference for matters up to \$50,000 for which a defence is lodged. A similar step exists in the Victorian Magistrates Court but its effectiveness is limited to those matters where both parties have a genuine desire to settle. Experience in the motor vehicle finance space, indicates that a settlement is achieved on about 25 – 40% of occasions.

The NSW debt recovery system appears to be the most effective in Australia for the enforcement of judgments including the ability of debtors to, on application, seek and obtain an alternative payment order from a magistrate. The NSW Local Court is providing a cost-effective lower court jurisdiction model for Australia.

3.2. Powers of entry

Encouraging a greater appreciation by the NSW Police Force of the rights of entry to premises to which lenders are entitled pursuant to their commercial finance agreements and that court orders are not required and cannot be obtained on unregulated contracts would be helpful. Within the State a great deal of lending is done on mobile assets (cars, trucks etc) and lenders can experience being blocked from recovering possession of assets by members of the police force on occasions when lender's the right to do so is clear.

The ABA hopes that these comments are of assistance to your Committee and again we appreciate and thank the Committee for its interest in seeking the ABA's views for this inquiry.

Yours sincerely,



Ian Gilbert