

DEBT RECOVERY IN NSW

Organisation: American Express Australia Limited
Name: Mr John Galletta
Position: Vice President and Senior Counsel
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American Express Australia Limited

American Express House
12 Shelley Street
Sydney NSW 2000 Australia

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Via email: legalaffairs@parliament.nsw.gov.au

The Chair
Committee on Legal Affairs
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Sir

Inquiry into Debt Recovery in NSW

Thank you for inviting American Express to make submissions to the inquiry conducted by the Legislative Assembly Committee on Legal Affairs in relation to debt recovery in New South Wales.

1. About American Express

American Express is one of the largest global payment providers. The company issues credit, charge and prepaid cards and acquires its own transactions, as well as working with bank partners to issue cards in 136 countries. The company has experience with a broad spectrum of financial services legislation globally. The feedback in this submission is given in that context.

American Express engages in debt collection services by:

- (a) pursuing its own debts by telephone only; and
- (b) outsourcing collection of its debts to debt collection agencies.

Being part of the competitive and heavily regulated financial services industry and having a world-wide reputation to protect, American Express takes its obligations of regulatory compliance very seriously and aims to maintain best-practice standards on all regulatory and compliance related issues, including debt recovery.

2. Scope of submission

Debt collection in New South Wales is governed by numerous Commonwealth laws and guidelines, including:

- (a) the National Consumer Credit Protection Act (**NCCP Act**);
- (b) the Australian Securities and Investments Commission Act; and
- (c) the Debt Collection Guidelines issued by ASIC and the ACCC.

Licensing of debt collectors in New South Wales is governed by the Commercial Agents and Private Inquiry Agents Act 2004 (**CAPIA Act**).

As the Inquiry is based in New South Wales, we have restricted our submission to the operation and content of the CAPIA Act but refer to the requirements under the NCCP Act to the extent that having an external dispute resolution scheme is relevant to consumer protection.

Our main concern in relation to the CAPIA Act is set out below.

3. Failure to distinguish between debt collection via telephone and in-person

The CAPIA Act does not distinguish between debt collectors engaging in telephone only collection activities and those engaging in full service, in person debt collection activities.

Outsourcing of less material activities such as telephone-based debt recovery to overseas providers is increasingly common for many financial services providers, both for its cost-effectiveness as well as improved administrative functionality.

Under the NCCP Act, holders of an Australian Credit Licence are ultimately responsible for the activities of representatives who engage in credit activities on the Licensee's behalf. Consumers have the ability to take advantage of the Licensee's internal dispute resolution process as well as their external dispute resolution scheme.

American Express is a member of the Financial Ombudsman Services, a free service for consumers to resolve complaints they may have with American Express, including in relation to debt collection.

As currently drafted, the CAPIA Act imposes the same levels of compliance, training and licensing obligations on debt collectors engaging in telephone-only collection activities as on in-person debt collection activities.

4. Recommendation

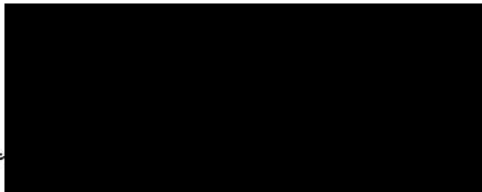
The CAPIA Act should either entirely exempt debt collectors who solely conduct telephone based collection or allow for a less stringent standard of compliance, particularly for credit providers who are licensed under the NCCP Act.

For instance, the requirement for photographic identification or fingerprinting is unjustifiably onerous and unnecessary in the case of persons only engaging in telephone collection activities because those measures can have no discernable impact on consumer protection during the course of telephone-only conversations.

An exemption from these unnecessarily onerous standards of compliance should particularly apply where the credit provider outsourcing the phone-based debt collection is a member of an external dispute resolution scheme. In that situation, the consumers who interact with these debt collection agencies maintain a high standard of protection as they would be able to raise a dispute about the conduct of the debt collector to both the credit provider itself as well as to an external dispute resolution scheme.

We are happy to discuss these items in more detail. Please contact John Galletta in our General Counsel's Office on [REDACTED] for further information.

Yours sincerely,



John Galletta
Vice President and Senior Counsel
American Express