



**Australian Collectors & Debt Buyers Association**

# **CODE OF PRACTICE**

**2<sup>ND</sup> EDITION**

**JANUARY 2020**



*This Code of Practice sets out the commitment of  
Subscribers in delivering collection services which best  
meet community standards and expectations.  
By subscribing, members of Australian Collectors & Debt Buyers  
Association make a continuing commitment to you to maintain  
a collections environment based on ethical behaviour,  
including acting fairly, reasonably and respectfully  
whilst protecting your privacy and confidentiality.*



## CONTENTS

|  |    |
|--|----|
| Part A - Introduction  | 4  |
| Part B - Application of this Code                                  | 5  |
| Part C - Our key commitments to You                                | 6  |
| 1. Complying with this Code  | 6  |
| Part D - Delivering on Our commitments                             | 8  |
| 2. Communications  | 8  |
| 3. Telephone contacts  | 8  |
| 4. Face-to-face contacts   | 8  |
| 5. Publicising the Code  | 9  |
| 6. Training Our staff  | 9  |
| Part E - Dealing with financial hardship                           | 10 |
| 7. Working with You  | 10 |
| 8. Information requests  | 10 |
| 9. Hardship outcomes   | 10 |
| Part F - Dealing with Your Complaint                               | 12 |
| 10. Internal Dispute Resolution (IDR)                              | 12 |
| 11. External Dispute Resolution (EDR)                              | 12 |
| 12. Availability of information about dispute resolution processes | 12 |
| 13. Making a Code Complaint  | 13 |
| Part G - Our Code responsibilities                                 | 14 |
| 14. Compliance responsibilities                                    | 14 |
| Part H - Code administration                                       | 15 |
| 15. Administration by an Independent Committee                     | 15 |
| 16. Role of Code Monitoring Committee and Compliance Manager       | 15 |
| 17. Code Complaint procedures                                      | 15 |
| 18. Amending the Code  | 16 |
| 19. Reviewing the Code   | 16 |
| 20. Code and Charter   | 16 |
| 21. Definitions  | 16 |
| Annexure 1 - Definitions   | 17 |
| Annexure 2 - Helpful information                                   | 19 |



## CODE OF PRACTICE

### PART A - INTRODUCTION

The Australian Collectors & Debt Buyers Association Code of Practice (Code) is the industry code of the Australian Collectors & Debt Buyers Association (ACDBA). Compliance with this Code is a compulsory obligation for ACDBA members.

ACDBA was established in 2009 to assist and represent companies who collect, buy and/or sell debt. Membership is voluntary and ACDBA members represent the majority of the collections market in Australia. ACDBA promotes and encourages member behaviour based upon high ethical and corporate governance standards.

ACDBA members work with consumers in financial difficulties to recover debts in relation to accounts owned by and on behalf of original creditors (known as Contingency Collections) or alternatively having purchased accounts from original credit providers on their own behalf (known as Purchase Debt Ledger Collections).

Developed in consultation with a wide range of key stakeholders including government, regulators, consumer groups and ACDBA members the objective of this Code is to improve the collections environment for both consumers and the industry by:

- ensuring best practice and good, open and transparent governance in the application and administration of the Code;
- providing a benchmark for professional behaviour and conduct in connection with ethical and compliant collection activities; and
- supporting the principles of this Code and identifying the actions that must be taken where a breach of the Code occurs.

This Code complements laws and regulatory guidance applicable to Australian collectors and with some obligations sets higher standards for members to maintain.

By subscribing to this Code, ACDBA members make an important public commitment to their customers as to the value they place on acting ethically and responsibly, embracing strong corporate governance and standards when collecting and buying Consumer Debt including adopting fair and respectful collection practices and maintaining protection of customer privacy.

The inaugural *Code of Practice March 2016* promoted best practice leading to higher standards in the collections industry and is updated by this version from 1 January 2020.

## **PART B - APPLICATION OF THIS CODE**

Members of ACDBA have agreed as a condition of ongoing membership to comply with this Code as a Subscriber.

The Code has effect for collections transactions and related dealings of Subscribers from **16 March 2016** being the date the Code was first adopted by ACDBA except where an entity joins ACDBA on a subsequent date, such entity's obligations under the Code shall take effect from the date of being accepted as a member of ACDBA.

This version of the Code takes effect from **1 January 2020** and will apply for all Code Complaints lodged on or after that date<sup>1</sup>.

Administration of the Code is the responsibility of an independent committee known as the Code Monitoring Committee (CMC). The CMC is governed by the Code Monitoring Committee Charter (Charter) published with the Code.

Code obligations relate to the collection and buying of Consumer Debt, being any debt owed or allegedly owed by a natural person or Small Business.

Specifically, Code obligations apply for collections transactions and related dealings of Subscribers in respect to any Consumer Debt handled under instructions from an originating creditor or from the date of assignment of a debt upon purchase from an originating creditor.

Before lodging a Code Complaint, a customer must first give the Subscriber an opportunity to resolve the Complaint through its Internal Dispute Resolution and External Dispute Resolution processes.

---

<sup>1</sup> Collection transactions and related dealings of Subscribers occurring before 1 January 2020 will be measured against the Subscriber obligations detailed in Part C of the Code of Practice March 2016 (1<sup>st</sup> Edition), but all other matters will be in accordance with the 2<sup>nd</sup> Edition of the Code and Charter.



## CODE OF PRACTICE

### PART C - OUR KEY COMMITMENTS TO YOU

#### 1. Complying with this Code

We will:

- 1.1. Act fairly and reasonably towards You in a legal, equitable, transparent and respectful manner, taking into account Your conduct, Our conduct and Our respective rights and obligations
- 1.2. Not engage in practices which are aggressive, deceptive, deceitful, oppressive or improper, whether lawful or not
- 1.3. Take extra care with vulnerable customers including those who are experiencing:
  - age-related impairment;
  - cognitive impairment;
  - elder abuse;
  - family or domestic violence;
  - financial abuse;
  - mental illness;
  - serious illness; or
  - any other personal, or financial, circumstance causing significant detriment.

We may become aware of Your vulnerability only if You tell Us about it.

- 1.4. Comply with all relevant laws and best practice guidelines relating to the Australian Collections industry including the ACCC/ASIC Debt collection guideline <sup>2</sup> and updates thereto
- 1.5. Acknowledge Your rights under this Code are in addition to any rights You may have under Federal, State and Territory laws
- 1.6. Comply with this Code, even if under relevant law it imposes an additional obligation, unless to do so, would lead to a breach of the law
- 1.7. Provide general information about Your rights and obligations which arise out of Our collections activities
- 1.8. Respect and protect Your privacy and confidentiality
- 1.9. Not act in a manner intended to publicly embarrass You or cause You distress
- 1.10. Where We are collecting as a Debt Buyer, only after careful consideration and having first made genuine but unsuccessful attempts to reach agreement with You for repayment arrangements for Your account, initiate litigation or insolvency proceedings

---

<sup>2</sup> ASIC Regulatory Guide 96 *Debt collection guideline: for collectors and creditors* - as published July 2017 and any subsequent update

- 1.11. Not imply any intention to proceed with litigation or insolvency proceedings against You if such action is not possible, intended or being considered
- 1.12. Take reasonable steps to ensure We process information about You on an accurate and timely basis
- 1.13. Handle any Complaints promptly and fairly and provide You with information on avenues for resolving Disputes if We are not able to reach agreement with You
- 1.14. Ensure Our staff (and Our authorised representatives) are trained to:
  - competently and efficiently undertake their collections activities in compliance with this Code
  - have an adequate knowledge of the provisions of this Code and its application to collections activities
- 1.15. Make the Code available by:
  - sending a copy of this Code to You on request
  - displaying at Our offices a copy of this Code in a readily visible manner
  - publishing this Code in a visible and easily accessible area on Our website
- 1.16. Through the ACDBA consult with stakeholder organisations to continuously improve the standards and practice of the Australian Collections industry
- 1.17. Require the ACDBA to commission an independent review of this Code at least every 5 years or, more often as required or determined by ACDBA with such review to be conducted in consultation with:
  - ACDBA members
  - consumer organisations
  - relevant regulatory bodies
  - other interested stakeholders



## CODE OF PRACTICE

### PART D - DELIVERING ON OUR COMMITMENTS

#### 2. Communications

We will:

- 2.1. Communicate with You or Your representative in a courteous and respectful manner using plain language
- 2.2. Respond to You or Your representative's requests for information in a legal, timely and reasonable manner or as agreed
- 2.3. Take reasonable steps to ensure the person We contact is the customer or the customer's authorised representative
- 2.4. Communicate with You at reasonable times and intervals, taking into account where possible Your preferred method of communication and if face-to-face, Your preferred place of communication.
- 2.5. Ensure You are made aware of Our opening hours and contact details to assist You in contacting Us
- 2.6. Take reasonable steps to ensure that the address used in Our communications to You (whether written, by telephone, email or text), is verified as correct and not normally shared by other people (such as a business email address) before We communicate with You

#### 3. Telephone contacts

We will:

- 3.1. When leaving a telephone message for You not disclose the nature of the call, any details relating to the Debt or other personal information
- 3.2. If Our staff member uses a pseudonym name ensure it will be easily identifiable within Our organisation

#### 4. Face-to-face contacts

We will:

- 4.1. In circumstances where it is necessary for Us (or Our representative) to meet with You face-to-face:
  - where appropriate, give You adequate notice of the planned meeting
  - arrange the meeting at a time and place convenient to You
  - leave when requested by You to do so



**5. Publicising the Code**

- 5.1. In conjunction with the ACDBA We will publicise this Code and promote Our adoption of it, including in Our offices. We will make copies of the Code and will give or post You a copy on request. We will publish the Code (or a link to it) in a visible and easily accessible area on Our website, if We have one.

**6. Training Our staff**

- 6.1. We will ensure that Our employees, agents and representatives receive training on the Code, and that they apply it in their dealings with You.



## CODE OF PRACTICE

### PART E - DEALING WITH FINANCIAL HARDSHIP

#### 7. Working with You

We will work with You to identify Your situation of financial hardship and will:

- 7.1. Help You through Your financial difficulties, which may include referring You to a not-for-profit financial counsellor to get independent advice and support and who can speak on Your behalf
- 7.2. Expect You to be open and honest when providing details of Your financial hardship
- 7.3. Suspend any non-legal debt collection and recovery action where You are seeking financial counselling assistance or similar, for a reasonable period
- 7.4. Where permissible under law, ensure information relating to Your financial hardship is passed on to any third party contingent agents instructed by Us to collect Your Debt

#### 8. Information requests

We will endeavour to keep information requests to a minimum and not seek unnecessary or duplicate documentation when assessing whether financial hardship is demonstrated and may take into account such things as:

- 8.1. The reason for Your hardship (such as illness, unemployment, relationship breakdown or any other unexpected change in Your financial circumstances)
- 8.2. Evidence of employment - such as payslips, tax returns, contracts
- 8.3. Evidence of other income - such as bank statements, Centrelink statements
- 8.4. Evidence of Your financial position - assets (such as bank accounts, motor vehicles, furnishings) and liabilities (such as loan agreements and statements, credit card statements)
- 8.5. Evidence of Your medical condition - such as a medical certificate from a doctor, disability support pension
- 8.6. Other evidence - like an employment separation statement

#### 9. Hardship outcomes

Where financial hardship is demonstrated We will work with You to provide a hardship outcome that is commensurate with Your current situation, this may include, but is not limited to:

- 9.1. Accept Your reasonable offers to pay by instalments based on the maximum amount You are able to pay
- 9.2. Allow You to apportion available income to priority items such as rent, food, utilities, medications and clothing, when assessing the maximum amount You can pay

- 9.3. Not knowingly accept payment arrangements for an indefinite period which do not reduce the principal balance outstanding
- 9.4. Where We own the Debt, We shall take all steps to fairly and reasonably consider the circumstances and appropriateness of any ongoing interest and fees in line with Our Hardship Policy including taking into account the situation of any vulnerable consumer experiencing ongoing financial difficulty
- 9.5. As a minimum, We will meet the requirements of s72 of the National Credit Code<sup>3</sup>

---

<sup>3</sup> Section 72 of the National Credit Code (which is Schedule 1 to the National Credit Act) allows a debtor to request a change to the terms of their credit contract on the grounds of financial hardship



## CODE OF PRACTICE

### PART F - DEALING WITH YOUR COMPLAINT

#### 10. Internal Dispute Resolution (IDR)

- 10.1. We will have an internal process for handling Disputes with You which is free and accessible
- 10.2. Our internal process will meet the Australian Standards, such as that outlined in ASIC Regulatory Guide 165<sup>4</sup>

#### 11. External Dispute Resolution (EDR)

- 11.1. If You cannot achieve a satisfactory resolution of Your Dispute with Us through Our Internal Dispute Resolution (IDR) process, You may:
  - 11.1.1. Where We are collecting as a Contingent Agent for a principal client, raise the Dispute direct with Our client for resolution; or
  - 11.1.2. Where We are collecting as a Debt Buyer, elevate the Dispute to the Australian Financial Complaints Authority (AFCA) in accordance with AFCA's terms of reference for resolution - such process will be:
    - free of charge to You; and
    - consistent with the standard outlined in ASIC Regulatory Guide 165

#### 12. Availability of information about dispute resolution processes

We will:

- 12.1. Prominently publicise the availability and accessibility of both Our IDR and EDR schemes for resolving Disputes with You where We control that point of contact including:
  - at Our offices
  - in a visible and easily accessible area on Our websites
- 12.2. Also provide You with information about:
  - Our IDR processes for dealing with a Dispute at the time any Dispute arises; and
  - Our EDR processes at the same time as You are told about the final outcome of the IDR process, if Your Complaint is not wholly satisfied

---

<sup>4</sup> ASIC Regulatory Guide 165 *Licensing: Internal and external dispute resolution* - as published May 2018 and any subsequent update

### **13. Making a Code Complaint**

- 13.1. Any person with an unresolved Dispute, after having first made genuine attempts to obtain a resolution with Us through Our IDR and if applicable EDR schemes may then make a Code Complaint about an alleged breach to the Compliance Manager.
- 13.2. By submitting a Code Complaint You provide consent to the CMC to consider the allegation made against the Subscriber under the provisions of this Code and authorise the CMC under the relevant privacy legislation and laws to access, view and consider Your personal and/or financial information and to exchange Your personal and/or financial information including, if applicable, relevant sensitive information, to other parties or external organisations where reasonably necessary for the purpose of dealing with the Code Complaint, and as required or permitted by law.
- 13.3. All Code Complaints about an alleged breach should be addressed to:

|   |
|---|
| <p><b>Compliance Manager   ACDBA Code of Practice</b><br/><b>C/- Australian Collectors &amp; Debt Buyers Association</b><br/><b>PO Box 295 WARATAH NSW 2298</b><br/><b>Email: <a href="mailto:compliance@acdba.com">compliance@acdba.com</a></b><br/><b>Telephone: 02 4925 2099</b></p> |
|---|





## CODE OF PRACTICE

### PART G - OUR CODE RESPONSIBILITIES

#### 14. Compliance responsibilities

We will:

- 14.1. Be in breach of this Code if Our employees, agents, or representatives fail to comply with the Code when acting on Our behalf.
- 14.2. Cooperate fully with the CMC and the Compliance Manager in the discharge of their functions, including the undertaking of own motion compliance inquiries and the investigation of alleged breaches of the Code by Us.
- 14.3. Where, as the result of an investigation by the CMC, We are found to have been in breach of the Code, comply with any direction from the CMC to remedy the breach and take reasonable steps to prevent a breach reoccurring. We understand that failure to comply with such directions from the CMC may result in the imposition of one or more of the Sanctions referred to in Clause 17.3
- 14.4. Without limiting Clause 14.2, comply with any reasonable request to provide access to information, documents and systems, which the CMC considers necessary to discharge its functions. We will comply with any such reasonable request except if We certify that to comply with a request would constitute a breach of either the law or Our duty of confidentiality to a third party, or if legal professional privilege attaches to the information requested by the CMC.
- 14.5. Where the law or Our duty of confidentiality prevents Us from disclosing information without first obtaining the consent of a third party, take reasonable steps to obtain that consent.
- 14.6. Accept that Code breach determinations made, and sanctions imposed, in accordance with this Code and the CMC Charter are binding on Us, and comply with those determinations and/or sanctions.
- 14.7. Complete an Annual Compliance Statement (ACS) in the required form on Our compliance with the Code and submit that report within 3 months of the end of the annual reporting period, or other period determined by the CMC.

## **PART H - CODE ADMINISTRATION**

### **15. Administration by an Independent Committee**

- 15.1. The Code is administered by the Code Monitoring Committee (CMC), an independent committee established by the ACDBA and in accordance with the Code Monitoring Committee Charter included with the Code. The CMC consists of an industry representative, a consumer representative, and an independent Chair.

### **16. Role of Code Monitoring Committee and Compliance Manager**

- 16.1. In summary, the responsibilities of the Committee include monitoring and reporting on compliance with the Code, and determining Code breach issues that have been referred to it. The CMC will publish an Annual Report on Subscribers' compliance with the Code and the CMC's compliance activities.
- 16.2. Pursuant to the Charter, the CMC may appoint a Compliance Manager to undertake compliance functions on its behalf. The Compliance Manager will report to and be directed by the Committee. Functions of the Compliance Manager may include: receiving compliance reports from Subscribers; receiving and investigating Code breach allegations; undertaking own motion compliance inquiries; preparing reports and recommendations; and supporting the Committee.
- 16.3. The activities of the CMC and the Compliance Manager are funded by the ACDBA.

### **17. Code Complaint procedures**

- 17.1. The Compliance Manager and the CMC will ensure that all parties to a Code Complaint are accorded procedural fairness. As part of this, all parties will be given a reasonable opportunity to make submissions about the Code Complaint, and a further opportunity to make submissions before any proposed or draft determination is finalised.
- 17.2. All determinations of the CMC will be in writing, and will include a description of the Code Complaint, a summary of the CMC's findings and conclusions, the CMC's decision, and a brief statement of the CMC's reasons.
- 17.3. The CMC may impose one or more of the following sanctions on a Subscriber:
- formally warn the Subscriber
  - require the Subscriber to undertake a compliance review
  - require the Subscriber to undertake a staff training program on the Code
  - require the Subscriber to undertake corrective advertising
  - publicly name the Subscriber as non-compliant with the Code
  - advise ACDBA of the Subscriber's non-compliant status and/or failure to undertake a required course of action.



## CODE OF PRACTICE

17.4. The CMC may only impose a Sanction on a Subscriber if it is satisfied that the Subscriber:

- is guilty of serious or systemic non-compliance with the Code, or
- has ignored a request from the CMC to remedy a breach of the Code or has failed to remedy that breach within a reasonable time, or
- has breached an undertaking given to the CMC, or
- has not taken reasonable steps to prevent a breach of the Code from continuing to occur or reoccurring after having been warned by the CMC that a Sanction might be imposed.

### 18. Amending the Code

18.1. As Code owner, ACDBA may amend the Code from time to time. Before doing so, ACDBA will consult with its members, ASIC, the CMC, and other industry and external stakeholders as ACDBA determines.

### 19. Reviewing the Code

19.1. In consultation with the CMC, ACDBA will arrange for reviews of the Code to be undertaken at least every five years or, more often as required or determined by ACDBA.

### 20. Code and Charter

- 20.1. This Code is intended to be read together and in conjunction with the Charter.
- 20.2. Where this Code mentions and/or refers to provisions contained in the Charter then, those relevant provisions of the Charter are intended to be incorporated into and form part of this Code, with their full meaning and effect as if those relevant provisions of the Charter were repeated in full in this Code.
- 20.3. If there is any inconsistency between this Code and the Charter, in connection with the incorporated provisions and/or the CMC's powers and authority then, the provisions contained in the Charter will prevail.

### 21. Definitions

21.1. Definitions of terms used throughout this Code are detailed in Annexure 1

## ANNEXURE 1 - DEFINITIONS

| <b>Term</b>               | <b>Meaning in this document</b>  |
|---------------------------|--|
| ACCC                      | Australian Competition & Consumer Commission   |
| ACDBA                     | Australian Collectors & Debt Buyers Association  |
| ACS                       | Annual Compliance Statement of a Subscriber lodged with the Code Monitoring Committee  |
| AFCA                      | Australian Financial Complaints Authority  |
| Annual Report             | The Annual Report published by the CMC on Subscribers' compliance with the Code and the CMC's compliance activities.   |
| ASIC                      | Australian Securities & Investments Commission   |
| Charter                   | The Code Monitoring Committee Charter established by ACDBA under the Code  |
| CMC                       | The Code Monitoring Committee established by ACDBA   |
| Code                      | The Australian Collectors & Debt Buyers Association Code of Practice, unless otherwise qualified   |
| Code Complaint            | Complaint lodged with ACDBA by You alleging a breach of the Code by a Subscriber   |
| Code Monitoring Committee | The Code Monitoring Committee established pursuant to the Charter  |
| Code Subscriber           | An entity which is a member of ACDBA and is bound by and must comply with the provisions of the Code   |
| Collections               | The activity of debt collection whether undertaken by an entity acting as a Contingent Agent or as a Debt Purchaser  |
| Complaint                 | Any expression of dissatisfaction made to Us related to Our services or to Our complaints handling process, where a response or resolution is explicitly or implicitly expected    |
| Compliance Manager        | The person appointed by the CMC to undertake compliance functions on its behalf  |
| Consumer Debt             | Any Debt owed by a natural person or Small Business  |
| Contingent Agent          | An entity or person who has the express, implied or ostensible authority to undertake debt collection on behalf of a principal creditor where a Debt has not been sold or assigned |



## CODE OF PRACTICE

|                                  |   |
|----------------------------------|---|
| Contingency Collections          | Collections by a Contingent Agent on behalf of an originating creditor which owns the rights to the Debt  |
| Customer                         | A natural person or Small Business with whom a Subscriber deals in relation to a Consumer Debt  |
| Debt                             | An amount of money owed and includes an alleged debt  |
| Debt Buyer or Debt Purchaser     | An entity which has assumed the rights and obligations of an original credit provider in relation to a Debt by means of a deed of assignment  |
| Debt collection guideline        | ASIC Regulatory Guide 96: Debt collection guideline: for collectors and creditors (a joint publication of ACCC and ASIC)  |
| Dispute                          | A Complaint that We have not been able to resolve to Your satisfaction  |
| EDR Scheme                       | An ASIC approved External Dispute Resolution Scheme namely AFCA   |
| IDR Process                      | The Subscriber's Internal Dispute Resolution process that complies with standards or requirements made or approved by ASIC  |
| Our or Us or We                  | <p>The Subscriber which is bound by and must comply with the provisions of the Code and includes all persons, who represent the Subscriber, including but not limited to:</p> <ul style="list-style-type: none"><li>▪ permanent, full-time and part-time employees,</li><li>▪ managers and supervisors,</li><li>▪ casual employees,</li><li>▪ contractors, representatives and agents engaged by the Subscriber, and</li><li>▪ the Board of Directors</li></ul> |
| Purchase Debt Ledger Collections | Collections by a Debt Purchaser on its own behalf, having assumed the rights and obligations of an original credit provider in relation to a Debt by means of a deed of assignment  |
| Reasonableness                   | Reasonableness within the Code shall be assessed to an objective standard taking into account all relevant circumstances  |
| Small Business                   | A Primary Producer (being a primary production business within the meaning of s 995.1(1) of the Income tax Assessment Act 1997) or other business that had less than 100 employees at the time of its dealings with the Subscriber  |
| Subscriber                       | An entity which is a member of ACDBA and is bound by and must comply with the provisions of the Code  |
| You or Your                      | You, the reader, if You are Our Customer  |



## ANNEXURE 2 - HELPFUL INFORMATION

### Financial Hardship

Financial hardship occurs when a consumer is unexpectedly unable to meet their repayment obligations. This can be as a result of a number of causes including: accident, separation, death of a family member, unexpected medical or funeral expenses, reduction of work hours, redundancy, or a downturn in business.

If you are finding it difficult to make repayments you should contact your financial firm straight away. Many financial firms have a dedicated financial hardship team that you can speak to. Be prepared to tell them about your income and expenses, when you think your situation will improve and what help you would need and for how long.

Making any repayments you can afford will reduce the amount of interest accruing on the loan and may also support your request for assistance. A budget is the best tool to find a suitable solution and will help you understand your financial position and the repayments you are able to make.

Many companies advertise to assist in solving debt problems – if choosing a fee charging firm, consider whether they will act in your best interests or whether a not-for-profit financial counsellor might be better positioned to assist.

If you need help with preparing a budget or understanding your situation, you can contact a financial counsellor for assistance. Financial counsellors provide their services free of charge and can talk with you about what options might be available to you. You can call the National Debt Helpline on 1800 007 007 to speak to a financial counsellor.

### Credit Reporting Bodies

Credit Reporting Bodies (CRB) are organisations whose business involves handling personal information to give another organisation information about the creditworthiness of an individual. Some of this information will be stated in the credit file the CRB maintains for each individual.

An individual can ask a CRB for a copy of the credit file they hold about them - the CRB will request personal information to enable them to properly identify the individual making the request. Individuals can obtain a copy of their credit report for free from a CRB:

- if they have applied for, and been refused credit, within the past 90 days; and
- where their request for access relates to a decision by a CRB or a credit provider to correct information included in their credit report; and
- once a year (not counting the above circumstances).

You can request a copy of your credit report from these CRBs:

Equifax [www.equifax.com.au](http://www.equifax.com.au)

phone: 138 332

Experian [www.experian.com.au/order-credit-report](http://www.experian.com.au/order-credit-report)

phone: 1300 783 684

illion [www.checkyourcredit.com.au](http://www.checkyourcredit.com.au)

phone: 1300 734 806



## CODE OF PRACTICE

### Internal Dispute Resolution (IDR)

The first step in addressing any concern, dispute, complaint or other dissatisfaction you have with a Subscriber should be to contact the Subscriber about your complaint.

All Subscribers to the ACDBA Code of Practice have agreed to have an internal process for handling disputes which meets Australian Standards specifically ASIC Regulatory Guide 165 - generally such a process is known as Internal Dispute Resolution (IDR).

The Australian Financial Complaints Authority encourages consumers wishing to make a complaint to first go through IDR with the financial firm and offering the following tips:

*You can do this by phone, in person or in writing. Let them know about the problem or issue you're having and explain what you'd like them to do to resolve or address it.*

*Have the details of the issue or problem available when you're talking to your financial firm. If you have an idea about the type of outcome you want, this is also helpful. We understand that dealing with a financial problem can be frustrating and cause strong emotion; however, it is important to engage in a respectful manner.<sup>5</sup>*

### External Dispute Resolution (EDR) Schemes

A requirement of the Australian Credit Licence held by ACDBA members operating as debt buyers is membership of an external dispute resolution (EDR) scheme approved by ASIC.

The Australian Financial Complaints Authority (AFCA) is a new EDR scheme which commenced operations on 1 November 2018 to deal with complaints from consumers and small businesses about financial services and products. It is operated by a not-for-profit company limited by guarantee authorised by the Minister for Revenue and Financial Services.

In all instances where you have a complaint with an ACDBA member the matter should first be raised directly with that member in accordance with its Internal Dispute Resolution process if this becomes necessary. In the event resolution cannot be reached complaints should then be directed to AFCA.

AFCA replaced three existing EDR schemes - the Financial Ombudsman Service, the Credit and Investments Ombudsman and Superannuation Complaints Tribunal so that consumers have access to a single EDR scheme.

AFCA is free to consumers and small businesses with its operations funded by contributions made by its financial firm members.

For more information about AFCA, including contact details or to lodge a complaint with AFCA visit [www.afca.org.au](https://www.afca.org.au).

---

<sup>5</sup> <https://www.afca.org.au/make-a-complaint/complain/internal-dispute-resolution-tips/>

### **Australian Competition & Consumer Commission**

The Australian Competition & Consumer Commission (ACCC) is Australia's competition regulator and national consumer law champion. Its charter is to promote competition and fair trading and regulate national infrastructure to make markets work for everyone.

Its primary responsibility is to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws - in particular the Competition and Consumer Act 2010. Contact ACCC by visiting [www.accc.gov.au](http://www.accc.gov.au).

### **Australian Securities & Investments Commission**

The Australian Securities & Investments Commission (ASIC) is Australia's integrated corporate, markets, financial services and consumer credit regulator. As the consumer credit regulator, ASIC licenses and regulates people and businesses engaging in consumer credit activities (including banks, credit unions, finance companies, and mortgage and finance brokers). ASIC ensures that licensees meet the standards - including their responsibilities to consumers - that are set out in the National Consumer Credit Protection Act 2009.

ASIC maintains a website providing resources to assist consumers to make the most of their money - visit [www.moneysmart.gov.au](http://www.moneysmart.gov.au).

### **Financial Counselling Australia**

Financial Counselling Australia (FCA) is the national voice for the financial counselling profession in Australia which:

- Provides resources and support for financial counsellors;
- Advocates for a fairer marketplace;
- Works to raise the profile of financial counsellors;
- Advocates to increase access to financial counselling; and
- Works to improve hardship processes for people in financial difficulty.

People from all walks of life can find themselves with money problems. Financial counsellors are non-judgmental, qualified professionals who provide information, support and advocacy to people in financial difficulty. Working in community organisations, their services are free, independent and confidential. If you need help with your financial situation consider contacting a financial counsellor for assistance - you can call the National Debt Helpline on 1800 007 007 to speak to a financial counsellor for free.

### **Office of the Australian Information Commissioner**

The Office of the Australian Information Commissioner (OAIC) is an independent agency within the Attorney General's portfolio. Its purpose is to promote and uphold privacy and information access rights.

To contact the OAIC call the Enquiries Line on 1300 363 992 or visit [www.oaic.gov.au](http://www.oaic.gov.au) for more information.

## **Australian Collectors & Debt Buyers Association Limited**

---

Telephone: 02 4925 2099 | Email: [admin@acdba.com](mailto:admin@acdba.com) | Postal: PO Box 295 Waratah NSW 2298



**Australian Collectors & Debt Buyers Association**

# **CODE MONITORING COMMITTEE CHARTER**

**2<sup>ND</sup> EDITION**

**JANUARY 2020**





### CONTENTS

|  |    |
|--|----|
| Section A - Administrative matters                               | 4  |
| 1. Introduction  | 4  |
| 2. CMC Members   | 5  |
| 3. Organisational structure                                      | 6  |
| 4. Meetings of CMC Members                                       | 7  |
| Section B - Compliance monitoring                                | 9  |
| 5. Compliance monitoring process                                 | 9  |
| Section C - Compliance investigations                            | 10 |
| 6. Institution of a compliance investigation                     | 10 |
| 7. Compliance investigations approach                            | 12 |
| 8. Other matters   | 13 |
| Section D - Concluding compliance investigations                 | 15 |
| 9. Concluding compliance investigations without a Determination  | 15 |
| 10. Concluding compliance investigations by way of Determination | 15 |
| Section E - Sanctioning Code Subscribers                         | 17 |
| 11. Imposing sanctions   | 17 |
| Section F - Collection and publication of data                   | 18 |
| 12. Data   | 18 |
| Annexure 1 - Definitions   | 20 |



## CODE MONITORING COMMITTEE CHARTER

### SECTION A - ADMINISTRATIVE MATTERS

#### 1. Introduction

##### 1.1. Scope of this document

This Charter is made in pursuance of the ACDBA Code of Practice (the Code). Together with the Code, this Charter sets out the terms, to which the Code Subscribers have agreed, that govern the functions and operations of the Code Monitoring Committee (CMC) contemplated in the Code. This Charter must be published on the website of the Australian Collectors & Debt Buyers Association (the ACDBA).

If there is any inconsistency between this Charter and the Code, the provisions contained in this Charter will prevail.

##### 1.2. Functions of the CMC

The CMC is established in pursuance of Part G of the Code and in accordance with the terms of this Charter:

- (a) To investigate, and where appropriate make a Determination on, any allegation from any person that a Code Subscriber has breached the Code (however the CMC will not investigate, or make any Determination on, any other matter);
- (b) To monitor Code Subscribers' compliance with the Code, which may include conducting its own motion inquiries into one or more Code Subscribers' compliance with the Code; and
- (c) To monitor any other aspects of the Code that are referred to the CMC by the ACDBA.

For the avoidance of doubt, the CMC's functions only relate to the Code as it has applied since the CMC was established.

##### 1.3. Principles that underpin the CMC's operation

- (a) The CMC must act reasonably in carrying out its responsibilities to (as relevant) monitor, investigate, determine and report on compliance by Code Subscribers with the Code.
- (b) When monitoring, investigating, determining and reporting on compliance with the Code, the CMC must:
  - i. act with independence and do what in the CMC's opinion is appropriate having regard to the nature of its functions and activities;
  - ii. be fair;
  - iii. proceed efficiently and with the minimum necessary formality and technicality; and
  - iv. be as transparent as possible, whilst also acting in accordance with its confidentiality and privacy obligations.

## CODE MONITORING COMMITTEE CHARTER

### 1.4. CMC Operating Procedures

- (a) The CMC must set operating procedures, in accordance with Part G of the Code and this Charter. The CMC will advise Code Subscribers of these operating procedures prior to their taking effect.
- (b) Any proposed changes to those operating procedures which, in the opinion of the CMC, are material will be developed by consulting with ACDBA. The CMC will advise Code Subscribers of such changes prior to their taking effect.

### 1.5. Supplementary procedures

As is deemed appropriate by the CMC, the operating procedures may be supplemented with more detailed procedures of a less material nature. Where the CMC reasonably expects it is necessary to do so, the CMC will advise Code Subscribers of these supplementary procedures prior to their taking effect.

### 1.6. Funding

The CMC and its activities will be funded and resourced by ACDBA in accordance with Part G of the Code.

### 1.7. Definitions

Definitions of terms used throughout this Charter are detailed in Annexure 1

## 2. CMC Members

### 2.1. Composition of the CMC

The Code specifies that the CMC shall be comprised of 3 members (each a CMC Member):

- (a) 1 person, as representative of Code Subscribers with relevant experience at a senior level in collections and/or debt buying in Australia, to be appointed by the ACDBA on behalf of the Code Subscribers.
- (b) 1 person, as representative of consumers with relevant experience and knowledge, to be appointed by the ACDBA; and
- (c) 1 person to be the Independent Chairperson of the CMC with experience in industry, commerce, public administration or government service, to be appointed by the ACDBA.

### 2.2. Tenure

Subject to Charter Clause 2.5, a CMC Member (including the Independent Chairperson) holds office for a 3 year term.

### 2.3. Re-appointment

A person who was, or is currently, a CMC Member is eligible for re-appointment to the CMC.





## CODE MONITORING COMMITTEE CHARTER

### 2.4. Resignation

A CMC Member may resign from the office during their term by notifying the relevant appointor of that CMC Member (see Charter Clause 2.1) in writing with at least 7 days' notice.

### 2.5. Termination

The appointment of a CMC Member may be terminated in writing by the relevant appointor of that CMC Member (see Charter Clause 2.1) in writing with at least 7 days' notice.

### 2.6. Casual vacancies

A person may be appointed by the relevant appointor under Charter Clause 2.1 to fill a casual vacancy in the office of a CMC Member, other than the position of the Independent Chairperson. A person appointed under this clause:

- (a) Must fulfil the experience requirements of the relevant paragraph of Charter Clause 2.1 as if the appointment were an ordinary appointment for that role under Charter Clause 2.1; and
- (b) Shall hold office until the casual vacancy ceases or the period during which their predecessor CMC Member would have held office expires, whichever occurs first.

### 2.7. Automatic vacancies

The office of a CMC Member (including the Independent Chairperson) will be automatically vacated if the person:

- (a) Becomes bankrupt or makes any arrangement or composition with creditors;
- (b) Becomes prohibited by law from being a director;
- (c) Becomes of unsound mind;
- (d) Resigns from the office during their term; or
- (e) Has their appointment terminated by their relevant appointor.

## 3. Organisational structure

### 3.1. Staffing and administrative support

- (a) The CMC may appoint a Compliance Manager (CM) and may appoint a person with relevant skills, experience and knowledge to that position to assist the CMC to carry out its administrative functions, monitoring, investigation, compliance, reporting and other support functions under and pursuant to Clause 16 of the Code.
- (b) The CM will, if appointed, be under the supervision and direction of the CMC.
- (c) The CMC will be supported by ACDBA administrative staff led by the CM (or if a CM is not appointed, the Independent Chairperson), who shall carry out administration and management of the CMC activities.

## CODE MONITORING COMMITTEE CHARTER

### 3.2. Independent Chairperson

- (a) The Independent Chairperson shall do all such things as are reasonable for the CMC to perform its functions and activities and shall exercise such powers or perform such duties as the CMC may from time to time delegate to the Independent Chairperson.
- (b) The Independent Chairperson may take action, in accordance with a resolution of the CMC, including but not limited to:
  - i. negotiating and entering into such contracts or commitments as are necessary or desirable for the CMC to enter, having regard to the nature of its functions and activities; and
  - ii. signing, or otherwise executing, all such documents or instruments as may be required for any of the foregoing.

### 3.3. Delegation of CMC powers

- (a) The CMC will exercise the power to make Determinations and may not delegate this power.
- (b) The CMC may delegate any of its other powers to the CM (either generally or in specific cases and either with or without conditions or restrictions). For example, the CMC may delegate to the CM the power:
  - i. to undertake a compliance investigation (whether as a result of an allegation by any person that a Code Subscriber has breached the Code, a referral by the ACDBA or the CMC's compliance monitoring process); and
  - ii. to request a Code Subscriber or any person making an allegation that a Code Subscriber has breached the Code to provide information to, or to procure information for, the CMC.

## 4. Meetings of CMC Members

### 4.1. Meetings and proceedings of CMC

The CMC will meet, discharge its responsibilities and convene, adjourn and otherwise regulate its meetings and proceedings in such manner as it may from time to time determine.

### 4.2. Quorum

- (a) A quorum for a meeting of the CMC shall be the 2 CMC Members representing consumers and industry respectively.
- (b) If at a meeting the Chair is not present, then the CMC Members in attendance may appoint one of them to be the Acting Chair for that meeting only, but such appointment shall not confer any additional or casting vote.



## CODE MONITORING COMMITTEE CHARTER

### 4.3. Voting

At a meeting of the CMC:

- (a) Each CMC Member has one vote; and
- (b) Decisions are made on the basis of a simple majority of votes:
  - i. subject to Charter Clause 4.3(b)(ii), on a show of hands; or
  - ii. where a meeting is conducted by teleconference, on the voices of each CMC Member.

### 4.4. Conflicts of interest

If a CMC Member has a material personal interest in relation to a matter that is being considered at a meeting of the CMC, in relation to the institution, conduct or conclusion of any compliance investigation and any Determination, the CMC Member must not:

- (a) Be present while the matter is being considered at the meeting; or
- (b) Vote on the matter, unless:
  - i. the CMC Member has declared the material personal interest in relation to the matter that is being considered by the CMC to the other CMC members;
  - ii. the other CMC members are satisfied the material personal interest should not disqualify the CMC Member from voting on the matter;
  - iii. a proper minute is made including details of the material personal interest and the circumstances in which it was disclosed to the other CMC members; and
  - iv. any minute, Determination or other report on the matter are made available for inspection on request by any Code Subscriber affected.

For the avoidance of doubt, a material personal interest for the purposes of this clause does not arise solely by reason of a CMC Member's current or previous employment with a Code Subscriber.

### 4.5. Alternate representative

- (a) Each of the CMC Members, other than the Independent Chairperson, may nominate an alternate person for a specified meeting, provided that the CMC Member has asked the person whom the relevant CMC Member proposes to nominate as an alternate if that person has any material personal interest in relation to a matter that is being considered at the relevant meeting of the CMC, and the person has declared to have had no such interest.
- (b) The ACDBA may appoint an alternate person for the Independent Chairperson for a specified meeting, or may instruct the CMC Members to defer the meeting until the Independent Chairperson is available.
- (c) A person nominated or appointed as an alternate CMC Member may exercise all the powers of that CMC Member other than the power to nominate an alternate, and is otherwise subject to all the requirements applying to the office of that CMC Member, at the meeting attended where the CMC Member is not present.



## **SECTION B - COMPLIANCE MONITORING**

### **5. Compliance monitoring process**

#### **5.1. Methods**

The CMC may for the purpose of monitoring compliance with the Code:

- (a) Issue one or more Code Subscribers with a questionnaire to gather information about practices and procedures and undertake onsite testing procedures to verify that information;
- (b) Request a Code Subscriber or the person that has made a relevant allegation to provide information to, or to procure information for, the CMC;
- (c) Conduct own motion inquiries for the purpose of monitoring one or more Code Subscribers' compliance with the Code, such as by conducting, by prior arrangement with the Code Subscriber, a compliance visit at the premises of a Code Subscriber including interviewing representatives of the Code Subscriber.

#### **5.2. Annual Compliance Statement**

- (a) Each Code Subscriber must lodge an Annual Compliance Statement (ACS) with the CMC reporting on the Code Subscriber's compliance with the Code during the previous 12 months (or, if the Code Subscriber has adopted the Code during that 12 month period, the Code Subscriber must report how it plans to achieve compliance with the Code during the next 12 month period).
- (b) The ACS must be in the form that has been approved by the CMC from time to time for use by all Code Subscribers.
- (c) The CMC will review the ACS lodged by each Code Subscriber.

### SECTION C - COMPLIANCE INVESTIGATIONS

#### 6. Institution of a compliance investigation

##### 6.1. Commencement of a compliance investigation

A CMC compliance investigation may commence in any of the following ways:

- (a) In response to an allegation by any person, that a Code Subscriber has breached the Code (see Charter Clause 1.2(a)); or
- (b) As an outcome of the CMC's monitoring process if the CMC has reason to suspect that a Code Subscriber may have breached the Code (see Charter Clause 1.2(b));
- (c) In response to a referral from the ACDBA (see Charter Clause 1.2(c)).

##### 6.2. Matters outside the scope of CMC's investigative powers

- (a) The CMC must not commence a compliance investigation in the following circumstances:
  - i. if the CMC is, or becomes, aware that the allegation has not first been raised by the complainant with the Code Subscriber through its IDR or complaints processes so as to allow the Code Subscriber an opportunity to resolve the allegation. In such a case the CMC must not consider the relevant allegation until being informed of the outcome of such processes;
  - ii. if the CMC is, or becomes, aware that the allegation has not first been raised by the complainant with the Australian Financial Complaints Authority (AFCA), if the Code Subscriber is a member of AFCA. In such a case the CMC must not consider the relevant allegation until being informed that AFCA has determined, or declined to determine a finding in relation to the allegation;
  - iii. if the CMC is, or becomes, aware that the allegation is being or will be heard by another forum (whether as a standalone matter or as part of any process or proceeding). In such a case the CMC must not consider the relevant allegation until the relevant forum has determined, or declined to determine a finding in relation to the allegation;
  - iv. if the allegation to the CMC is based on the same events and facts as a previous allegation to the CMC by the person making the new allegation, unless there is new information;
  - v. if the events to which the allegation relates occurred before the Code Subscriber to which the allegation relates became a Code Subscriber or in relation to an entity which was not a Code Subscriber at the time of the events to which the allegation relates and was subsequently acquired by a Code Subscriber;

## CODE MONITORING COMMITTEE CHARTER

- vi. if the person making the allegation was aware of the events to which the allegation relates, or would have become aware of them if they had used reasonable diligence, more than 1 year before the person making the allegation first notified the CMC in writing (unless the person making the allegation had lodged within that 1 year period a Dispute with an EDR Scheme about those events and the EDR Scheme considered there may have been a breach of the Code);
- vii. if the investigation is an outcome of the CMC's monitoring process more than 1 year after the CMC had reason to suspect that the Code Subscriber may have breached the Code.

The CMC may request, in relation to a particular allegation or outcome of the CMC's monitoring process referred to in Charter Clause 6.2(a) (vi) or (vii) above, that a Code Subscriber extend the relevant time limit. The Code Subscriber retains the discretion whether to agree to such a request for an extension of the limit.

- (b) Whilst a CMC compliance investigation may be commenced as a result of an allegation by any person and may comprise determining whether a Code Subscriber has breached the Code, the CMC's role does not include determining what redress should be provided to a person affected by non-compliance with the Code. A Code Subscriber has internal complaints handling arrangements to consider redress and any membership of an EDR Scheme also provides an avenue for redress if a Determination concludes that there has been a breach of the Code.

### 6.3. CMC's discretion in relation to compliance investigations

- (a) Further to Charter Clause 6.2, the CMC may decide, at any stage prior to the making of a Determination, that it is not appropriate to investigate or to continue to investigate a matter commenced under Charter Clause 6.1. In making this decision, the CMC may take into account anything it considers reasonable and appropriate including:
  - i. the nature of the allegations made against the relevant Code Subscriber, including the significance of the issues raised;
  - ii. the period of time that has elapsed since the alleged event occurred;
  - iii. whether a court or other forum would be a more appropriate forum to consider the matter;
  - iv. whether the matter is frivolous or vexatious; and
  - v. previous work undertaken by the CMC to monitor or review practices and procedures of the Code Subscriber that are relevant to the allegations made.
- (b) If in the course of conducting a compliance investigation the CMC considers that Charter Clause 6.3(a)(iii) or 6.3(a)(iv) apply, the CMC must not continue to investigate the allegation.



## CODE MONITORING COMMITTEE CHARTER

### 7. Compliance investigations approach

#### 7.1. Approach

- (a) When conducting a compliance investigation, the CMC must take into account the relevant provisions of the Code and any applicable laws. If in the course of conducting a compliance investigation, the CMC decides whether to make a Determination, Charter Clause 10.2 provides for what the CMC must have regard to.
- (b) The CMC will ensure, as far as practicable, that monitoring and investigations do not:
  - i. disrupt Code Subscribers' business unduly; nor
  - ii. inconvenience Code Subscribers' customers unduly.

#### 7.2. Provision of information by Code Subscribers

- (a) The CMC may make reasonable requests for a Code Subscriber to provide, or provide access to, information, documents or systems, which are in the possession or power of the Code Subscriber, that the CMC considers necessary in order to discharge its functions.
- (b) The CMC may require the Code Subscriber to comply with the CMC's request within 21 days or such longer timeframe where the Code Subscriber satisfies the CMC that additional time is needed, except where the Code Subscriber satisfies the CMC that:
  - i. to comply with the request would breach a law (including, without limitation, any law relating to confidentiality or privacy) and that, where a third party's consent to the Code Subscriber complying with the request would avoid a breach of that law, the Code Subscriber has taken reasonable steps to obtain the appropriate consent and such consent was not provided;
  - ii. to comply with the request would breach a duty of confidentiality to a third party and the Code Subscriber has taken reasonable steps to obtain consent to the Code Subscriber complying with the request and such consent was not provided;
  - iii. to comply with the request would breach a Court order or prejudice a current investigation by the police or other law enforcement agency;
  - iv. legal professional privilege attaches to the relevant information, documents or systems; or
  - v. the information, documents or systems do not exist or no longer exist.
- (c) Where the information, document or system is claimed by the Code Subscriber to be commercially sensitive, the CMC may agree with the Code Subscriber to receive it or have access to it on a conditional basis, including on terms that preserve confidentiality.

## CODE MONITORING COMMITTEE CHARTER

### 7.3. Other obligations required of Code Subscribers

- (a) The CMC may require a Code Subscriber to do anything else that the CMC reasonably considers may assist a compliance investigation into the Code Subscriber's compliance with the Code undertaken by the CMC. This may include requiring:
  - i. the Code Subscriber to provide an appropriate representative to attend an interview; or
  - ii. the Code Subscriber to investigate and report back to the CMC on relevant matters (including, where appropriate, with the assistance of external expertise).
- (b) Where the CMC makes a request of a Code Subscriber, the CMC may require its request to be complied with within 21 days or such longer timeframe where the Code Subscriber satisfies the CMC that additional time is needed.
- (c) In concluding a compliance investigation or making a Determination, the CMC will take into account any undertaking by the Code Subscriber as to action it will take, or has taken, in relation to the matter.

### 7.4. Other information

Where a compliance investigation is instituted as a result of an allegation by any person pursuant to Charter Clause 6.1(a), the CMC may request the person making the allegation to provide or procure information that the CMC reasonably considers may assist the CMC's investigation of the matter.

### 7.5. Consequences of non-compliance with a CMC request

Where a Code Subscriber, or any person alleging a Code Subscriber has breached the Code without reasonable excuse, fails to comply with a CMC request within the timeframe specified by the CMC, the CMC may take steps it considers reasonable in the circumstances to conclude the compliance investigation, including proceeding with a Determination of the matter.

## 8. Other matters

### 8.1. Rules of evidence

The CMC is not bound by any legal rule of evidence or by its previous Determinations.

### 8.2. External consultation

- (a) In discharging its functions, the CMC may consult with independent external experts as the CMC thinks reasonably appropriate and necessary, provided that the CMC takes reasonable steps to ensure that:
  - i. the identities of any parties involved in an alleged breach of the Code are not disclosed to any relevant external expert unless disclosure is material to the matter and each relevant party, in each case, has consented to the disclosure;



## CODE MONITORING COMMITTEE CHARTER

- ii. any such external expert maintains confidentiality of the information provided to it, including any information claimed to be commercially sensitive, and that the external expert acts in accordance with the CMC's privacy obligations, and other duties of confidentiality, on the basis that it is deemed to be bound in each case; and
  - iii. any such external expert otherwise complies with these requirements so far as reasonably relevant.
- (b) The reasonable steps to be taken by the CMC under Charter Clause 8.2(a) extend to ensuring those requirements are also observed by the external expert's employees and contractors.

## **SECTION D - CONCLUDING COMPLIANCE INVESTIGATIONS**

### **9. Concluding compliance investigations without a Determination**

#### **9.1. Process**

Subject to Charter Clause 6, the process for concluding a compliance investigation without a Determination is as follows:

- (a) The CMC must give the Code Subscriber a reasonable opportunity to respond to an allegation that the Code Subscriber has breached the Code.
- (b) If the CMC considers that:
  - i. there is no basis to determine a breach of the Code has occurred; or
  - ii. the Code Subscriber has acknowledged that it has, or may have, breached the Code, and the Code Subscriber has taken, or proposes to take, appropriate action to remedy any breach or potential breach or to prevent a reoccurrence, then the CMC may decide to conclude the matter without further investigation or proceeding to a formal Determination.
- (c) Where the CMC concludes a compliance investigation without a Determination, the CMC will inform the Code Subscriber of the outcome and where a compliance investigation was commenced in response to an allegation that a Code Subscriber has breached the Code, the person who made the allegation will also be informed of the outcome.

### **10. Concluding compliance investigations by way of Determination**

#### **10.1. Reasonable opportunity to be heard**

The CMC must give the Code Subscriber a reasonable opportunity to respond to an allegation that the Code Subscriber has breached the Code.

#### **10.2. Criteria for Determination**

When deciding whether to make a Determination, the CMC will do what is reasonable in all the circumstances, having regard to:

- (a) Legal principles relevant to the decision making process;
- (b) Applicable Code provisions; and
- (c) Any CMC guidance as to Code requirements.

#### **10.3. Notice of Determination**

The CMC may conclude a compliance investigation by way of a Determination only after adhering to the following process:

- (a) Before the Determination is made, the CMC must give at least 14 days written notice to the relevant Code Subscriber and, if applicable, the person that has made a relevant allegation, about the CMC's intention to make a Determination. The notice must include:





## CODE MONITORING COMMITTEE CHARTER

- i. a brief description of what Determination and findings the CMC intends to make and its reasons;
  - ii. if applicable, a brief description of any finding the CMC intends to make that the Code Subscriber is responsible for serious or systemic non-compliance with the Code, where the CMC reasonably suspects that this is the case;
  - iii. in the case of a compliance investigation commenced in response to an allegation, a statement about any conclusions the CMC has formed regarding the merits of the allegation;
- (b) The CMC must then seek final comments on the matter from the Code Subscriber and, in the case of a compliance investigation commenced in response to an allegation by any person that the Code Subscriber has breached the Code, from the person making the allegation; and
- (c) The CMC must give a reasonable opportunity for the relevant parties to make final comments.

### 10.4. Determination

- (a) After the CMC has given the relevant parties a reasonable time within which to make final comments, the CMC may make a Determination if it continues to consider that this is appropriate.
- (b) Each Determination must:
  - i. be in writing;
  - ii. include a brief description of the issues;
  - iii. set out the CMC's findings and views. In the case of a compliance investigation instituted in response to an allegation, the Determination will include the CMC's views as to whether the alleged breach was established in whole or in part, or whether the allegation was unfounded;
  - iv. if applicable, include any minutes or other reports made relating to a material personal interest of a CMC Member;
  - v. if applicable, state any finding by the CMC that the Code Subscriber is responsible for serious or systemic non-compliance with the Code; and
  - vi. include brief reasons for the conclusions and findings of the CMC including, if applicable, the conclusions and findings that support the CMC's intention to name the Code Subscriber (see Charter Clause 11.2) in its next Annual Report or on the ACDBA website, or both.
- (c) After the Determination is made the CMC must inform the Code Subscriber of the Determination and, in the case of a compliance investigation commenced in response to an allegation by any person that a Code Subscriber has breached the Code, the CMC must inform the person making the allegation of the Determination.

## **SECTION E - SANCTIONING CODE SUBSCRIBERS**

### **11. Imposing sanctions**

11.1. The CMC may impose one or more sanctions on a Code Subscriber in accordance with Clauses 17.3 and 17.4 of the Code.

11.2. Public naming of a Code Subscriber

The CMC may name a Code Subscriber in accordance with Clause 17.3 of the Code in its next Annual Report or on the ACDBA website, or both.

### SECTION F - COLLECTION AND PUBLICATION OF DATA

#### 12. Data

##### 12.1. Data collection

The CMC must, for each period for which it must prepare an Annual Report (see Charter Clause 12.2), collect and record information in relation to its operations for inclusion (in all cases de-identified except as contemplated in Charter Clause 11.2) in the Annual Report for the period including:

- (a) Information about the CMC's monitoring activity and the results of that activity;
- (b) The form of the ACS which each Code Subscriber was required to complete to detail their compliance with the Code and any observations following the CMC's review of the ACS lodged by each Code Subscriber for the period;
- (c) Information about referrals from the ACDBA to the CMC and the results of those referrals;
- (d) The number of compliance investigations it has commenced, the source of information for those investigations and the status of those investigations, including:
  - i. where a compliance investigation is open, the age and status of the investigation; and
  - ii. where a compliance investigation has been concluded, whether or not a Determination was made;
- (e) The time taken to conclude compliance investigations;
- (f) The number of allegations which were determined to be outside the CMC's responsibilities;
- (g) The level of compliance with the Code which the CMC has ascertained as a result of its monitoring activity and compliance investigations; and
- (h) A profile of current and completed compliance investigations that identifies, where relevant or necessary:
  - i. the relevant provisions of the Code;
  - ii. any underlying cause of the non-compliance with the Code;
  - iii. any compliance measures implemented by relevant Code Subscribers; and
  - iv. any systemic breaches or other trends.

The CMC may in its discretion also collect, for inclusion in its Annual Report, information about benefits and disadvantages to consumers resulting from Code Subscribers' compliance with the Code.

## **CODE MONITORING COMMITTEE CHARTER**

### **12.2. Publication of data**

- (a) The CMC must publish an Annual Report within 6 months of the end of each Financial Year and:
  - i. provide a copy of the Annual Report to each Code Subscriber and the ACDBA; and
  - ii. make copies of the Annual Report available to the public on the ACDBA website and on request.
- (b) Each Annual Report must be a fair and adequate summary and analysis of the information specified in Charter Clause 12.1, and any other matters the CMC thinks appropriate that are consistent with the functions of the CMC under the Code and this Charter.



## CODE MONITORING COMMITTEE CHARTER

### ANNEXURE 1 - DEFINITIONS

| <b>Term</b>               | <b>Meaning in this document</b>   |
|---------------------------|---|
| ACDBA                     | Australian Collectors & Debt Buyers Association   |
| ACS                       | Annual Compliance Statement of a Code Subscriber lodged with the Code Monitoring Committee  |
| AFCA                      | Australian Financial Complaints Authority   |
| Annual Report             | The Annual Report published by the CMC on Code Subscribers' compliance with the Code and the CMC's compliance activities.   |
| Charter                   | The Code Monitoring Committee Charter established by ACDBA under the Code   |
| CMC                       | The Code Monitoring Committee established by ACDBA  |
| CMC Member                | A member of the Code Monitoring Committee established by ACDBA  |
| Code                      | The Australian Collectors & Debt Buyers Association Code of Practice, unless otherwise qualified  |
| Code Monitoring Committee | The Code Monitoring Committee established pursuant to the Charter   |
| Code Subscriber           | An entity which is a member of ACDBA and is bound by and must comply with the provisions of the Code  |
| Complaint                 | Any expression of dissatisfaction made to Us related to Our services or to Our complaints handling process, where a response or resolution is explicitly or implicitly expected |
| Compliance Manager        | The person appointed by the CMC to undertake compliance functions on its behalf   |
| Customer                  | A natural person or Small Business with whom a Code Subscriber deals in relation to a Consumer Debt   |
| Dispute                   | A Complaint that We have not been able to resolve to Your satisfaction  |
| EDR Scheme                | An ASIC approved External Dispute Resolution Scheme namely AFCA   |
| IDR Process               | The Code Subscriber's Internal Dispute Resolution process that complies with standards or requirements made or approved by ASIC   |
| Reasonableness            | Reasonableness within the Code shall be assessed to an objective standard taking into account all relevant circumstances  |



## **Australian Collectors & Debt Buyers Association Limited**

---

Telephone: 02 4925 2099 | Email: [admin@acdba.com](mailto:admin@acdba.com) | Postal: PO Box 295 Waratah NSW 2298