

# Collecting overdue charges

Complaints we receive about collecting overdue charges include claims that:

- a provider or collection agent is still seeking payment for overdue charges when the charges are in dispute
- a provider has sold or assigned a debt to a third party company without notifying the consumer
- a collection agent used harsh, harassing or otherwise offensive methods to recover payment of a debt
- a provider did not stop collection activity after a consumer declared bankruptcy
- collection activity has continued past a limitation period.

In this position statement anyone collecting debt on behalf of a provider, whether they are employed by the provider or a third party company, is referred to as a **collector** or **collection agent**. A third party company that buys a debt from a provider is called either a **debt buyer** or **factor**, depending on the terminology used in the relevant legislation. A consumer who owes a debt may be referred to as a **debtor**.

**Credit management** means the process by which a provider:

- helps its customers to manage their spend on telecommunications services
- manages any credit risk to the provider, and
- collects overdue charges from its customers and former customers.

## Laws and codes of practice

The following laws and codes of practice are relevant to collecting overdue charges.

- [Competition and Consumer Act 2010, Schedule 2 The Australian Consumer Law](#)
- [Privacy Act 1988 Part IIIA – Credit reporting](#)
- [Bankruptcy Act 1966](#)
- State and territory statutes of limitation
- [Privacy \(Credit Reporting\) Code 2014 \(Version 1.2\)](#)
- [Telecommunications Consumer Protections \(TCP\) Code 2015](#)
- ACCC and ASIC [Debt collection guideline: for collectors and creditors 2014](#)
- ACCC compliance guide [Don't take advantage of disadvantage 2011](#)

*This position statement provides broad guidance on the law, good industry practice, and what the TIO may consider to be fair and reasonable in general circumstances. It is not a full statement of the law or good industry practice. The TIO considers each matter brought to it on its own particular merits.*

# POSITION STATEMENT

## Collecting overdue charges

### Our approach

When we deal with complaints about collecting overdue charges we consider the law, good industry practice, and fairness in all the circumstances.

#### The law

Rules in the Australian Consumer Law prohibit the use of:

- physical force
- undue harassment
- coercion

to support a demand for payment for goods or services. The Australian Consumer Law also prohibits misleading, deceptive, and unconscionable conduct.

Part IIIA of the Privacy Act and the Credit Reporting Code set rules about access to credit reports and other credit-worthiness information about individuals. These rules include that if a provider has already disclosed consumer credit liability information or default information to a credit reporting body before selling a debt to a debt buyer, both the provider and debt buyer must disclose the sale and the name of the debt buyer to the credit reporting body within 45 days of the sale of the debt.

Each state and territory sets limitation periods on debt recovery. The limitation period is normally six years, however in the Northern Territory a three-year period applies. In some jurisdictions, a payment or acknowledgment of the debt will re-start the limitation period even after the original period has expired.

With limited exceptions set out in the Bankruptcy Act, an unsecured creditor may not, in relation to a debt caught by the bankruptcy:

- enforce any remedy against the person or property of the bankrupt, or
- take or continue legal action or allow recovery action to continue against the bankrupt person.

A creditor or debt collector must also stop all informal collection activity against a bankrupt person for an unsecured debt covered by the bankruptcy.

### Good industry practice

#### Debt collection guideline: for collectors and creditors

The Debt collection guideline: for collectors and creditors includes the following guidance.

A collection agent should never:

- use abusive, offensive, obscene or discriminatory language towards a debtor
- make disrespectful or demeaning remarks about a debtor's character, situation in life, financial position, physical appearance, intelligence or other characteristics or circumstances
- embarrass or shame a debtor
- adopt an aggressive, threatening or intimidating manner
- use, or threaten to use, violence or physical force against a debtor, third party or against property
- mislead a debtor about the nature or extent of a debt, or the consequences of non-payment.

Once a debt is settled, any credit reporting body report on the debtor should be updated appropriately.

Representing that legal action will or may be taken when a limitation period is over may be misleading or deceptive. Such representation may also be unconscionable when the debtor has not had the opportunity to obtain legal advice.

Complaints and disputes must not be ignored. Providers and collection agents must have effective internal processes in place for logging, assessing, and where appropriate, taking timely action in response to them.

#### Telecommunications Consumer Protections Code

Rules in the Telecommunications Consumer Protections Code include:

At the time of, or before, issuing the first bill to a consumer a provider must tell the consumer about any processes the provider has for following up overdue bills, and assisting consumers who are having trouble paying their bills.

*This position statement provides broad guidance on the law, good industry practice, and what the TIO may consider to be fair and reasonable in general circumstances. It is not a full statement of the law or good industry practice. The TIO considers each matter brought to it on its own particular merits.*

# POSITION STATEMENT

## Collecting overdue charges

A provider must not take credit management action – including referring or selling a debt to a collection agent – on a debt that is in dispute or the subject of an unresolved complaint. A provider must make sure that all debts sold or assigned to a third party do not include any disputed amounts. A provider must resolve any billing complaint or telecommunications service issues that arise after a debt has been sold or assigned to a third party.

A provider must suspend credit management action while an arrangement under a financial hardship policy is being discussed or is in place. Exceptions to this rule include where the consumer agrees they cannot meet their obligations under an arrangement, or the consumer breaches the arrangement and cannot be contacted by the provider.

A provider must make sure:

- it complies with the law, industry codes and relevant guidelines when collecting or selling a debt, or disclosing personal information to a debt buyer
- its collection agents adopt best practice as per the ACCC and ASIC guidelines [Debt collection guideline: for collectors and creditors](#) and [Don't take advantage of disadvantage](#) when collecting amounts due
- it has an internal dispute resolution process for all of its debt collection activities
- it only sells a debt to a debt buyer if that debt buyer is a member of an ASIC approved external dispute resolution scheme
- it notifies the customer, or former customer, in writing within 25 business days that the debt has been sold, or arranges for the debt buyer to do so.

### TIO view

The [TIO Terms of Reference](#) state that we can make a temporary ruling about a provider's credit management action while we are handling a complaint. The provider must comply with this temporary ruling. For example, we can make a temporary ruling telling the provider to reconnect a service, remove a default

listing of the consumer or not pursue a debt.

A provider should not direct debit any amounts that are in dispute. See our position statement [Payments](#) for more information about direct debits.

We will also handle a complaint by a consumer about a provider's agent, dealer, contractor, related company or related person, including a debt buyer. We will, however, only deal with these complaints if we think it is fair and reasonable to do so. In particular, when a consumer's complaint relates solely to the conduct of a debt buyer and is about events that took place after a debt was sold, we may exercise discretion not to handle the complaint, and instead refer the consumer to the debt buyer's external dispute resolution scheme.

### Dealing with a dispute

To assess a complaint about collecting overdue charges, we may ask for information or documents from the consumer and provider. This may include:

- copies of bills
- receipts for payments made by the consumer
- a copy of the consumer's credit information held by a credit reporting body
- collections and contact notes maintained by the provider or collection agent
- bankruptcy records.

### Outcomes

When, in our view, a provider or its collection agent is trying to collect a debt:

- that is in dispute
- after a limitation period is over, or
- from a bankrupt consumer, and the limited exceptions in the Bankruptcy Act do not apply

we expect the provider to cease all collection activity, including arranging for its collection agent to cease collection activity.

*This position statement provides broad guidance on the law, good industry practice, and what the TIO may consider to be fair and reasonable in general circumstances. It is not a full statement of the law or good industry practice. The TIO considers each matter brought to it on its own particular merits.*

## POSITION STATEMENT

# Collecting overdue charges

When, in our view, a provider has sold or assigned a debt to a debt buyer, and some or all of the debt is in dispute, we expect the provider to address the dispute. This may require arranging for any debt collection activity to be placed on hold while the complaint is resolved, recalling the debt, or paying the debt buyer for the debt to make sure the dispute is kept between the provider and consumer only.

When, in our view, a collection agent has used harsh, harassing or otherwise offensive methods to recover payment of a debt we expect the collection agent to cease all inappropriate behaviour and apologise.

Our position statement [Personal information \(Australian Privacy Principles\)](#) may also be relevant if, in our view, there has been inappropriate use or disclosure of the consumer's personal information.

**Effective date:** 11 March 2016

*This position statement provides broad guidance on the law, good industry practice, and what the TIO may consider to be fair and reasonable in general circumstances. It is not a full statement of the law or good industry practice. The TIO considers each matter brought to it on its own particular merits.*