

CG LAW BULLETIN

OWED MONEY? NINE THINGS YOU NEED TO KNOW ABOUT COLLECTING DEBTS

No matter what industry you operate in, it is extremely frustrating when a customer or client fails to make payment for the goods that you have supplied or the services that you have rendered. But before you leave fifty messages on the debtor's answering machine or pay a visit to their workplace, you should consider your obligations under the various pieces of legislation which govern the collection of debts in Australia.

These include the Australian Consumer Law, the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Privacy Act 1988* (Cth). To assist you, we have compiled the following list of 'debt collecting essentials' to ensure that you do not end up in Court for all of the wrong reasons!

1. HOW SHOULD I COMMUNICATE WITH THE DEBTOR?

You should ensure you regularly communicate with your customer or client to convey your request for payment and give them information regarding the outstanding account. However, communications with the debtor must always be for a reasonable purpose and should only occur to the extent necessary.

It is considered reasonable to contact a debtor to discuss a payment plan or to ascertain why attempts to contact the debtor have not been responded to within a reasonable period. It is not reasonable to contact a debtor to frighten or intimidate them or demoralise or embarrass the debtor in front of other people.

2. WHEN CAN I CONTACT THE DEBTOR?

You may contact the debtor by telephone on Monday - Friday, between the hours of 7:30am and 9:00pm and on Saturday and Sunday between 9:00am and 9:00pm. You should not contact the debtor on a public holiday. Although you should first make reasonable endeavours to contact the debtor by phone, you are also able to contact the debtor face-to-face between the hours of 9:00am and 9:00pm on any day of the week.

3. HOW OFTEN CAN I CONTACT THE DEBTOR?

Unnecessary or too frequent contact may amount to undue harassment of the debtor. We recommend you do not contact a debtor more than three times per week, or ten times per month at most. This includes speaking to the debtor on the telephone or sending letters or emails to the debtor.

Once you have made contact, you must leave a reasonable interval before next contacting the debtor. If you are required to make face-to-face contact with the debtor, you should not do so more than once per fortnight.

4. CAN I VISIT A DEBTOR'S BUSINESS OR HOME?

A personal visit may be justified if the debtor fails to respond to other means of communication or to verify the identity or location of a debtor who is a natural person (rather than a business debtor) when this is in doubt. However you must not visit the debtor if they refuse your visit and you must leave the debtor's premises immediately if you are asked to do so.

Visiting a debtor's workplace should only be undertaken as a last resort unless the debtor has agreed to the visit. You should also take care to ensure that you comply with the privacy obligations specified in the next paragraph when visiting a proprietor or a director of a business debtor at the business premises.

5. CAN I SPEAK TO A DEBTOR'S EMPLOYEES, FAMILY OR CO-WORKERS REGARDING THE DEBT?

You may make enquiries regarding the location or contact details of the debtor (if the debtor is a natural person) or enquiries regarding the appropriate person to speak to regarding an account (if the debtor is a business or organisation), but you must not disclose information that indicates you are collecting a debt when making enquiries from a neighbour, family member, co-worker or employee of the debtor.

6. WHAT RECORDS DO I NEED TO KEEP?

You must ensure that you maintain accurate records of all communications with the debtor, including the time, date and nature of calls about the debt, visits in person, correspondence sent to the debtor and any payments made. You must also ensure that any payment plan or schedule agreed with the debtor is documented in writing and preferably signed by the debtor.

7. WHAT ARE MY OBLIGATIONS TO THE DEBTOR?

You must ensure that you do not:

- make misrepresentations to the debtor, for example, state that 'numerous attempts have been made to contact them' if this is not the case;
- pressure a debtor to pay in full, in unreasonable large instalments or to increase payments when you are aware the debtor is unable to do so; or
- abuse the debtor or make disrespectful or demeaning remarks about the debtor's character or situation in life, or adopt an aggressive, threatening or intimidating manner.

8. CAN I TELL THE DEBTOR THAT I WILL SUE THEM IF THEY DON'T PAY?

You must not threaten to take legal action against the debtor if taking legal action is not possible or if you are not actually considering taking legal action. You may be unaware whether action can be taken against the debtor and we recommend that you contact us prior to making statements to the debtor in this regard.

You must also ensure that you do not state or imply that the failure to pay the debt is a criminal matter - this is incorrect unless fraud or another offence is involved.

9. WHAT DO I DO IF THE DEBTOR STILL WON'T PAY?

If you have made all reasonable attempts to recover the debt without success, we encourage you to contact us to enquire about our fixed fee debt collection service.

If you have any questions in relation to this bulletin please contact a member of the CG Law Litigation & Dispute Resolution Team.

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