



ASIC & ACCC WANT A CLEAN FIGHT

It's almost trendy to use the fight metaphor after the Mundine v Green bout and the upcoming Maroons v Blues campaign.

This is about the debt collection process so perhaps the metaphor is a little stretched, but anyway the message is simple; the watchdogs want it kept clean. Perhaps given the apparent tightening of cash and collections generally, any discussion on collections has a certain timeliness to it. With the fines they are talking about, maybe you have clients that could do with it being brought to their attention.

Some months ago ASIC & ACCC combined to tell the debt collection industry they wanted them to clean up their act. They released a 66 page PDF booklet as a guide for collectors and creditors which can be found on the ASIC website.

This joint initiative appears to be the result of a build up of complaints where the watchdogs have highlighted the use of physical force, harassment or coercion, or engaging in misleading or deceptive conduct or unconscionable conduct when collecting debts and are threatening some serious fines.

Clearly the old pragmatic school of thought of "use whatever works" has gone by the board.

The booklet is a very practical document where it is clear that what you can and can't do depends on the relevant situation. It even goes into recommended methods of contact and recommended frequency of such contact.

It refers frequently to the ASIC Act and Trade Practices Act. Misleading and deceptive conduct gets a fair airing but from an accountants interpretation it would need a lawyerly frame of mind to be comfortable the debt collection process really did fit into either or both Acts. I guess suffice to say the enforcers believe so and will likely throw funds at enforcing that belief.

Of interest is the quote from Justice Hill on the issue of undue harassment, which even an accountant understands: "where the frequency, nature and content of the communications is such that they are calculated to intimidate or demoralise, tire out or exhaust a debtor, rather than merely convey demand for recovery, the conduct will constitute undue harassment".

This all sounds very "touchy feely" but all the way through the guidelines, it emphasises that it is right and proper for the debt to be collected, it just has to be done the right way.

We feel this is a difficult issue, because whilst you can't get blood from a stone, making the most noise helps you to jump the cue in situations where there is some money but not enough to go around. With this in mind it makes commercial sense to try. Yes there are the undue and unfair preference provisions, but many creditors get the money first and argue with the liquidator or trustee later. Dare we suggest proceed with caution.

As ever we welcome your insolvency and related enquiries.



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