

Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	James Beaumont – General Counsel
Organisation	Baycorp Group

Responses to discussion document questions

The Baycorp Group of Companies (**Baycorp**) is a leading New Zealand receivables management Group providing services from receivables outsourcing, to debt collection and debt purchase. Baycorp holds an Australian Credit License.

Baycorp has over 60 years' experience in the New Zealand and Australian credit industry and is a registered Financial Services Provider as per the *Financial Services Providers (Registration & Disputes Resolution) Act 2008*, and current member of Financial Services Complaints Ltd (**FSCL**). As a purchaser of consumer debts, Baycorp also has obligations under the *Credit Contracts and Consumer Finance Act 2003 (CCCFA)*.

Baycorp takes an active interest in the development of the framework regulating the credit industry and is committed to ensuring that customer confidence and satisfaction in the industry. Baycorp appreciates this opportunity to respond to the parts of the Consumer Credit Regulation Review that directly relates to its business.

Regarding irresponsible debt collection practices

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Is this an accurate picture of the problems for consumers experiencing debt collection? Do you have information that confirms or refutes these issues, or sheds light on how widespread or severe they are?

Baycorp has no doubt that some consumers are experiencing debt collection practices as outlined in paragraphs 112 to 114 of the discussion paper. However, Baycorp is concerned that these results are negatively skewed by consumer advocates being exposed to only a fraction of the customer base that debt collectors have contact with in any given year.

To give context, Baycorp has well over two (2) million interactions with customers in New Zealand in any given year, and in 2017 alone, we only received 77 complaints.

As a business that buys consumer debts from other businesses in New Zealand, Baycorp is bound by Consumer Protection legislation and associated obligations surrounding debt collection practices, reasonable fees and costs, and affordable payment arrangements on the grounds of financial hardship. Baycorp also operates in Australia and has other obligations that are not necessarily observed in New Zealand, such as requirements under

the Australian Securities and Investments Commission & Australian Competition and Consumer Commission Debt Collection Guideline, and the Australian Collectors and Debt Buyers Association Code of Practice (collectively **Australian Collection Guidelines**). These Australian Collection Guidelines not only require Baycorp to consider affordable payment arrangements for customers and outline certain obligations when customers are meeting such arrangements, but they also outline what is and is not acceptable when it comes to debtor harassment, and false and misleading claims. While Baycorp is not required to apply the same standard under its legal obligations in New Zealand, it takes pride in the fact that it does employ the same standard across the business in both countries in an effort to be a customer centric organisation.

Further to the above, Baycorp is a supplier of debt collection services to major New Zealand banks, finance companies, utility firms and Crown entities. All of these clients require that Baycorp operate to a similar level of regulatory standard, compliance, data security and customer centricity as they do. Furthermore, Baycorp is audited by a number of these clients to ensure we meet the required standard.

Whilst a number of the debts referred to Baycorp by organisations do not fall under the CCCFA, Baycorp applies the same debt collection processes across all of these debts (i.e. the debt collection processes that Baycorp applies to Crown entities whose debts are outside the CCCFA are also applied to bank debts that are inside the scope of the CCCFA).

It is important to note that a number of other large debt collection agencies supply debt collection services to similar corporate entities mentioned above and therefore operate under similar strict requirements to adhere to regulatory standards, compliance data security and customer centric regimes.

Whilst Baycorp also understands the concerns around excessive fees and charges, it is Baycorp's belief that these excessive fees relate to high interest credit contracts such as payday loans. Where debt collection businesses operating in New Zealand also charge excessive fees, we again submit that this is likely the minority that do so and not the majority of reputable debt collection companies. For instance, we do not charge fees per action, but rather commission on monies actually collected. Furthermore, before any costs are on-forwarded to a customer to pay, we check our clients' ability to do so by carefully inspecting any sales terms and conditions or contracts.

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What information should be provided to borrowers by debt collectors? When and how should this information be provided?

When Baycorp acts on a contingency basis for a creditor, Baycorp already provides the following information to customers:

- The name of the original creditor
- The amount owing as at the date of referral
- The original creditor's reference/account number

Where Baycorp is assigned the debts, Baycorp provides all the above information as well as the following:

- The date on which the debt was assigned to Baycorp
- The amount owing as at the date of assignment
- Continuing disclosure statements after assignment in line with CCCFA requirements
- Information about the rights of the borrower and contact information for budget advisory services

Baycorp does not, as a matter of course, provide:

- The composition of the outstanding amount
- A copy of the original credit contract

Baycorp submits that the above practice of providing the bulk of information at the start should be sufficient to identify the debt. In most cases, a customer will be able to reconcile the composition of that debt through continuing disclosure statements sent by the creditor either before referral or before assignment, which they should already have if that creditor is bound by obligations under the CCCFA. In a large majority of cases however, customers do not request further information than that outlined above. Therefore, to require that a creditor provide this information in all cases would be unnecessary, impractical and cost prohibitive.

However, Baycorp does attempt to obtain copies of the contract and previous continuing disclosure statements from the original creditor and provide it to the customer upon request, especially when the customer is denying liability to the debt (which is not often).

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Do you agree with our assessment of the costs and benefits of the options for addressing irresponsible debt collection? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

With regard to Option A, Baycorp submits that there will be no significant benefit in requiring a debt collection agency that has been assigned a debt to provide copies of the contract and previous continuing disclosures (i.e. previous account statements) at the outset. This is because the increase costs of getting that information on bulk assignments will significantly outweigh the benefits (such as reduced number of disputed debts) given the small amount of requests for that information Baycorp gets from its customers. Furthermore, as stated above, a majority of customers already have that information from the original creditor.

With regard to Options B and C, as stated above, Baycorp already complies with the Australian Collection Guidelines, which outline obligations to provide affordable payment plans and specify appropriate contact limits. Baycorp is also directly subject to the CCCFA being an assignee of debts (Option D), and employ the same debt collection standards

across all aspects of its business. Baycorp understands that most reputable debt collection agencies operating in New Zealand also operate in Australia and therefore employ the same standards. However, Baycorp agrees that any additional requirements beyond what it already does across both Australia and New Zealand would increase costs, which would inherently be factored into the costs of providing credit to all consumers.

With regard to Option E, Baycorp has some concerns. As mentioned in the discussion paper, third-party debt collection companies would still need to earn profits. If costs cannot be charged back to the customer, the discussion paper rightly points out that those costs may be passed to all borrowers through higher interest rates. Alternatively, creditors may stop using debt collection agencies and do the collection in-house. This could have a significant increase in their internal costs, which would be passed on to all customers at a higher rate.

Alternatively, creditors will use other methods of debt collection, such as lawyers; costs of which would significantly outweigh those charged by debt collection agencies. Again, those costs will either be passed on to the defaulting customer, or to all customers through increased costs of borrowing.

This would also significantly hurt the third party debt collection industry; most of which try to do the right thing by all involved.

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Do you have any suggestions for the design of options for addressing irresponsible debt collection? In particular, what is an appropriate frequency of contact with debtors before (and then after) a payment arrangement is entered into? Please state the likely impact of your proposed options on borrowers, lenders and the credit market.

The Australian Collection Guidelines thoroughly address debt collection practices and outline what is considered reasonable. They also address the issue of contact with customers before and after a payment arrangement is entered into.

In compliance with the Australian Collection Guidelines, Baycorp does not contact customers after a payment arrangement has been agreed, unless:

- the customer does not meet the terms of that arrangement, or
- the purpose is to review that arrangement after a period of 90 days (as advised when the arrangement is set), or
- Baycorp wants to provide the customer with an alternate solution to their debt, which is beneficial to them.

The likely impacts of the above are:

- Borrowers will benefit from an industry wide standard of acceptable debt collection practices. They will also benefit from less contact from debt collection agencies if they are making agreed payments.

- Although many of the major agencies that operate in both the Australian and New Zealand markets already uphold the same standards across both, it will give Regulators in New Zealand a standard by which to benchmark and enforce against the agencies that are not currently at the same standard.
- Those agencies that are engaging in unsatisfactory practices may have a financial impact with compliance requirements, and enforcement costs if Regulators act on breaches of such Guidelines. This could either force those players to comply or move away from the industry; thus giving a benefit to customers.
- Lenders will have comfort in the fact that their agents would be held to the same debt collection standards as them. It could also mean a reduction in complaints against them and reduction in their own costs.

Regardless of the above, Baycorp encourages its customers to contact it, even if they are on a payment arrangement, especially if they are having difficulties making the agreed payments. This is so we can assist them in rearranging their payments towards the debt and alleviate any stress before any default in payments occur.

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Which options for changes to the regulation of debt collection would you support? Which would you not support? Please explain how you made your assessment.

Baycorp would support a similar regime to the Australian Collection Guidelines, given it encompasses a combination of most of the elements of Options A, B, C and D. It also balances the interests of both the creditor/debt collection agency, and the customer. However, Baycorp would not support Option E – making external debt collection costs based for the reasons previous outlined.

Any other comments

We welcome any other comments that you may have.

A copy of the Australian Securities and Investments Commission & Australian Competition and Consumer Commission Debt Collection Guideline can be found here - <https://download.asic.gov.au/media/3549402/rg96-published-29-february-2016.pdf>

A copy of the Australian Collectors and Debt Buyers Association Code of Practice can be found here - <https://www.acdba.com/images/acdba/ACDBA-Code-of-Practice-Mar16.pdf>