



Debt Collection - How not to

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Credit Managers and anyone responsible for debt collection or credit control in a business organisation should be aware of the right and wrong ways to collect a debt.

In a recent decision of the Federal Court of Australia in *Australian Competition and Consumer Commission v ACM Group Limited (No 2)* [2018] FCA 1115 the Court was critical of the actions by a collection agency in the pursuit of a debt. By example, the Court held that the agency was relentless in telephoning a care facility on over 40 occasions to attempt to speak with a stroke victim patient whose telecommunications debt was unpaid, saying that high-pressure debt recovery techniques are inappropriate.

The Court was also critical of letters of demand that over capitalised statements such as “*NOTICE OF INTENTION TO COMMENCE LEGAL PROCEEDINGS*”. It said that the continued dispatch to a customer of letters that use of the words “intention” and “may” to threaten legal action was conduct that was misleading and deceptive within the meaning of the Australian Consumer Law and unconscionable.

However, this does not mean that you cannot issue a strongly worded letter of demand.

The use of a letter of demand by a creditor is an essential tool in the Credit Manager’s kit for the recovery of a debt, and debt collection would be a whole lot more difficult without it. However, there is a right way and a wrong way to use that tool. A letter of demand should be a notice to the debtor that if payment is not received, legal action will be commenced. Multiples of letters of demand sent to a debtor that are essentially only a threat of action to elicit payment may attract criticism from the Court.

Credit Managers should seek legal advice on their collections methods to ensure that the steps they take and tools used are compliant with the standards expected by the relevant legislation and our Courts. Failure to comply with the required standards can have much more serious consequences than not being able to recover the debt. Substantial fines have been imposed on companies that engage in inappropriate debt collection conduct.

The above summary is designed to give creditors a general idea of the recent Court decision that may impact upon them. Any specific advice on collection techniques and use of letters of demand can be discussed by contacting the team at Matthews Folbigg.

The judgment delivered by the Federal Court can be reviewed [here](#).

If you would like more information or advice in relation to insolvency, restructuring or debt



recovery practice and procedure, contact Darrin Mitchell on 02 9806 7428 or darrinm@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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