



**NATIONAL CODE OF PRACTICE FOR
INVESTIGATORS AND MERCANTILE AGENTS**

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Australian Institute of Private Detectives

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NOTE:

This Code of Practice commences from **15th September 2008**. The document has been constructed in the interests of all stakeholders and the professionalism of the Investigation and Mercantile Industry in Australia.

The document is the result of an extensive consultation process with stakeholders & governments in Australia and enhances the original Code of Practice document first published on 16.12.2005. The Code has recently been updated and amended via an open and transparent consultation process to better service all stakeholders in this vitally important industry, which traverses all private sector business and government sector operations.

The Code merely identifies and reflects compliance requirements for persons and organisations involved in investigation and mercantile activities in Australia in line with Australian laws.



CODE OF PRACTICE

FOR

INVESTIGATORS AND MERCANTILE

AGENTS IN AUSTRALIA

CODE OF PRACTICE FOR INVESTIGATORS AND MERCANTILE AGENTS IN

AUSTRALIA

Contents

PART A

INTRODUCTION AND APPLICATION

Definitions	...8
What is the Code?	...10
Why is it necessary?	...12
Application	...14
Probity Provisions	...16
1) Disqualified Persons	..17
2) Minor Offences	..17
Amendments	...18
Objectives of the Code	...18
Scope	...21
Guidelines & Compliance	...23
1) Workplace investigators	..25
2) Mercantile	..26
3) CPI/CPMA Exemption Provisions – Exempt Persons	..27
4) Facilitation Provisions – Certification	..29
5) Facilitation Provisions – CPD	..30
6) Representative Industry Bodies	..31
7) Certified Activities	..34
8) Investigations	..34
9) Mercantile	..35
10) Minimum Educational Requirements	..36
11) Specialist Education	..36
12) Mercantile – Investigation Dual Roles	..37
Citation	...37
Effective Date	...37

PART B

CODE COMMITMENTS

Legal Obligations	...40
Dispute Resolution Scheme	...40
Business Compliance Provisions	...43
Human Resources & Occupational Health & Safety Provisions	...44
Constitution	...50
Consultation	...50
i. Code Management	...50
ii. Standards Development	... 50
Conduct of AIPD Directors, Committee Members & Staff	...52
Responsibility & Remuneration of AIPD	...53
Conduct of Certified Practising Investigators (CPIs) & Certified Practising Mercantile Agents (CPMAs)	...53
Enforcement Provisions	...54
Professional Misconduct Provisions	...56
Breaches by Directors of Corporations or Business Entities	...56
Penalty Notice Provisions	...57
Extraordinary Amendment Provisions	...58
Fees & Charges	...59

PART C

PRACTICES & PROCEDURES

General Guidelines (Investigations and Mercantile Filed Activities)	... 64
Surveillance - Specific Guidelines	... 69
Mercantile - Specific Guidelines	... 73

PART A :

Introduction and Application

I.	Definitions 8
II.	What is the Code?10
II.	Why is the Code Necessary?12
III.	Application14
IV.	Probity Provisions16
	Disqualified Persons	..17
	Minor Offences	..17
V.	Amendments18
VI.	Objectives of the Code18
VII.	Scope21
VIII.	Guidelines & Compliance23
	1. Workplace investigators	..25
	2. Mercantile	..26
	3. CPI/CPMA Exemption Provisions – Exempt Pesons	..27
	4. Facilitation Provisions – Certification	..29
	5. Facilitation Provisions – CPD	..30
	6. Industry Representative Bodies	..31
	7. Certified Activities	..34
	8. Investigations	..34
	9. Mercantile Activities	..35
	10. Minimum Educational Requirements	..35
	11. Specialist Education	..36
	12. Mercantile – Investigation Dual Roles	..37
IX.	Citation37
X.	Effective Date37

Definitions

- A** **'AIPD'** means the Australian Institute of Private Detectives Ltd, a registered company acting nationally in the interests of Private Investigators & Commercial Agents.
- 'ANTA'** means the Australian National Training Authority (refer:- www.anta.gov.au) now transferred to DEST refer:- http://www.dest.gov.au/sectors/training_skills/policy_issues_reviews/key_issues/nts/
- 'ACB'** means Authorised Certification Body.
- 'AQF'** means Australian Qualifications Framework.
- 'AQTF'** means Australian Quality Training Framework.
- C** **'Certified Practising Investigator'** means a person accredited and certified under the requirements of this Code of Practice and holding appropriate qualifications under this Code of Practice and endorsed by a recognised industry representative body, to hold an industry Practising Certificate issued by the AIPD'.
- 'Certified Practising Mercantile Agent'** means a person accredited and certified under the requirements of this Code of Practice and holding appropriate qualifications under this Code of Practice and endorsed by a recognised industry representative body, to hold an industry Practising Certificate issued by the AIPD'.
- Certified Activities** means mandatory activities relevant to this Code
- 'Code'** means this Code of Practice and any guidelines published by the AIPD from time to time.
- Code Management Committee or (CMC)** means an elected committee of (4) persons responsible for the management of this Code of Practice.
- 'Commercial Agent'** means any person and/or firm who carries out any form of mercantile activity (debt collection, repossession of property, skip tracing, issue of court process) either commercially for financial reward or in their own business on behalf of a third party, or on a speculative basis to secure information to sell to a third party;
- 'Commercial Investigator'** means any person and/or firm who carries out any form of formal investigation activity either commercially for financial reward or in their own business on behalf of a third party, or on a speculative basis to secure information to sell to a third party.
- 'Competency'** means the ability to perform the professional activities in the occupation to the standard required by the industry.
- 'Complaints Officer'** means the authorised person at the AIPD, being a CPI or CPMA.
- 'Contractor'** means a sole trader investigator / mercantile agent or investigation /mercantile agent firm, business or company entity that receives investigation or mercantile work from an head contractor, being the organisation (government, private sector business or company) who engages the sole trader operator or investigation/mercantile agent firm to conduct such work activities.
- 'COP'** means this Code of Practice document.
- 'CPD'** means Continuous Professional Development.
- 'CPI'** means Certified Practicing Investigator (a person) holding appropriate qualifications under this Code of Practice to hold an industry Practising Certificate issued by the AIPD'.
- 'CPMA'** means Certified Practicing Mercantile Agent (a person) holding appropriate qualifications under this of Practice to hold an industry Practising Certificate issued by the AIPD'.

- D** **'DEST'** means the Department of Science & Training (a Commonwealth Australian Government department - refer: - www.dest.gov.au) also now known as Department of Education, Employment & Workplace Relations refer: - www.deewur.gov.au).
- 'DRP'** means Dispute Resolution Process.
- 'DRF'** means Dispute Resolution Form.
- 'DRS'** means Dispute Resolution Scheme
- E** **'E.O.I.'** means expression of interest.
- F** **'Field Investigator'** means an investigator carrying out the actual investigative assignment/s.
- 'Field' Operator /Agent** refers to the investigator or mercantile agent who carries out the actual investigation work or mercantile activity. This maybe a sole trader, sub-contractor or employee.
- I** **'Investigator'** means any person who carries out any form of formal investigation activity either commercially for financial reward or in their own business on behalf of a third party or employer; or on a speculative basis to secure information to sell to a third party; or employees of private sector organisations or employees in government departments and agencies, (outside those departments and agencies of which personnel are comparably trained., - such as enforcement agencies and defence forces and statutory fire departments but not including SES or any voluntary agency such as SES and bush fire service activities). Further, includes persons who carry out detailed investigations as an ancillary part of their main business, such as lawyers, journalists conducting covert operations.
- 'IM'** means Injury Management.
- 'IRB'** means Industry Representative Body (or association).
- L** **'Licensed Investigator'** means a person permitted under legislation to act as a commercial / private investigator.
- 'Licensed Commercial Agent'** means a person and/or firm permitted under legislation to act as a commercial/mercantile agent.
- 'Licensed Mercantile Agent'** means a person and/or firm permitted under legislation to act as a commercial/mercantile agent.
- 'Licensee'** means a person and/or firm permitted under legislation to act as a commercial/private investigator or commercial/mercantile agent.
- M** **'Members'** means financial members of the A.I.P.D or other recognised representative association or body.
- N** **'Nominated Responsible Person'** relates to a person who must be a CPI and/or CPMA required to be working on each place of business of an commercial investigation firm or mercantile agency where the directors or principles of the business are not qualified CPI's or CPMA's.
- O** **'Operator'** refers the investigator or mercantile agent who carries out the actual investigation work or mercantile activity. This maybe a sole trader, sub-contractor or employee.
- P** **'Private Investigator'** means a person Licensed under the relevant legislation. May relate in this Code to a sole principal operator, an investigation firm or sub-contractor investigator.
- 'Panel'** firm means a commercial investigation firm or mercantile firm that is an appointed service provider to an insurance company; financial institution; corporate organisation; legal firm; self-insured entity; government department or agency.
- 'Principal'** firm means the investigation firm that holds a contract with a client (head contractor) and engages the services of field operators to conduct the investigation or mercantile work activity.
- 'Practicing Certificate'** means a Certificate issued by the AIPD for the accredited/registered holder to offer professional services in a single specific or various specified portfolios, subject to

- being licensed (in applicable jurisdiction) and Certified in those portfolios and able to produce evidence of appropriate qualifications and training.
- R** **'Records'** means all records produced as a result of the investigator's business activities.
- 'RTO'** means Registered Training Organisation holding national accreditation for delivery of training packages under the ANTA (Australian National Training Authority) offering courses approved under the ANTA / AQTF (Australian Quality Training Framework) or through RTO licensees.
- 'RPL'** means Recognition of Prior Learning or experience gained over your lifetime and work history and used in an application in securing a competency or certification.
- 'RFT'** means Request for Tender
- S** **'Stakeholders'** means AIPD, all registered members; licensed/Certified Private Investigators; a Private Investigator's regular clients, including Corporate & Government entities; Insurance Council of Australia and its members and also non-members; other Insurance Associations and representative groups; Banking Institution Association; Federal & State Police Departments; Government Licensing Bodies; any entity instructing Private Investigator Companies or individual licensed/Certified Investigators;
- 'Sub-Agent'** means a private investigator sub-agent or certified commercial sub-agent under the relevant legislation to work under the instruction, management and training of a fully licensed/Private Investigator or Mercantile Agent.
- 'Suggested Reasonable Scale of Fees Schedule'** means the suggested fees deemed to be reasonable for an investigation firm to engage investigators taking into consideration best practice procedures, qualification and training requirements and assessed by an independent actuary or suitably qualified person as indicated herein and presented to the AIPD for industry reference. (The suggested figures listed below are only a guideline for reasonable fees taking into account the requirements of licensing, codes and mandatory qualifications in the various states/territories and also requirements in relation to other statutory requirements under other legislation such as OH&S and Risk Management standards as well as Insurance policies in the area's such as Professional Indemnity, Workers Compensation, Public Liability, Business Insurance and Personnel Accident Insurance.
- T** **'TQM'** means Total Quality Management business philosophy.

What is the Code?

1. The Code sets out common and suggested minimum standards of qualifications *and 'best practice'* applications for all Certified Practising Investigators (CPIs) and Certified Practising Mercantile Agents (CPMA's) providing services in Australia; and also, guidance for commercial investigation firms, mercantile agent firm proprietors / sole operators, investigation managers, supervisors and all persons working in investigative roles as employees (meaning any formal investigative role or fraud management role involving investigation of persons or property (in the private sector and government sector) and mercantile roles (mercantile roles specifically being debt collection, client debt management, repossession of property and process serving) in Australian business, government departments/agencies and particularly the insurance and financial services industry.

2. The requirements of the Code are based on 'best practice' principles in the commercial investigation and mercantile industry as well as taking into consideration OH&S law and current standards for persons working in government bodies {(such as the Federal Directive – *Fraud Control Guidelines 2002* issued by the Federal Minister for Justice and Customs and further reviewed in 2004. Refer - the Federal Attorney General's website at <http://www.ag.gov.au/aghome/commprot/crjd/LECD/fraud.html>); also, the *Training and Skills Recognition under State Government Departments Certified Agreement 2003* accepting the formal education standards of the Department of Education Science & Training's {DEST}/ Australian National Training Authority's (ANTA) Public Service Training Package PRS04 (refer - www.ntis.gov.au), and the ASIC / ACCC jointly published document "Debt Collection Guideline: for Collectors and Creditors October 2005" <http://www.accc.gov.au/content/index.phtml/itemId/733222> (ASIC Regulatory Guide RG96, see:- [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ACCC-ASIC Debt Collection Guideline.pdf/\\$file/ACCC-ASIC Debt Collection Guideline.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ACCC-ASIC%20Debt%20Collection%20Guideline.pdf/$file/ACCC-ASIC%20Debt%20Collection%20Guideline.pdf)) and/or **Annexure A** herein in order for persons working in these roles in both the private and government sectors to apply Total Quality Management (TQM) business operating principles to achieve optimum investigative and mercantile service applications.
3. Further to providing optimum service standards with core values of integrity, honesty, mutuality and professionalism whilst maintaining high standards in the occupational health & safety and industrial relations for all investigators and mercantile workers, the Code is designed to supply the foundation to uniformity in professional standards between the private sector and government sector employees that perform formal investigation and mercantile activities. It is a well established fact that nearly all government departments and agencies now employ the services of internal investigators, fraud management personnel and mercantile personnel (debt collection, repossession of property) and also utilise the services of external investigators and mercantile agents. It is therefore essential that the uniform professional standards are achieved and no imbalance is permitted between the private and government sectors.
4. The aim of the Code is to provide all levels of government, corporate entities, the legal profession and members of the public, with a single point of reference for the professional expectations of Certified Practising Investigators (CPI's) and Certified Practising Mercantile Agents (CPMA's). Further, information and guidelines for CPI's and CPMA's working as sole traders and sub-contractors. Further, that such services are provided in compliance with and in accordance with the numerous related Australian laws and particularly the various onerous OH&S laws which essentially require employers and head-contractors to ensure that all persons conducting a particular work activity on their behalf are suitably trained and qualified to carry out that work activity - this includes suitable training and education to meet industry standards and requirements. Further, and more specifically, if there is a Code of Practice or Industry Standard or recognised work process in place, then that standard or process must be met in order for one to

discharge one's obligations under OH&S law. Additional onus is often placed upon direct employers, and government particularly under the 'due diligence' requirements associated with the OH&S Acts and Regulations in all jurisdictions in Australia.

5. The Code merely identifies and reflects Australian laws and compliance requirements for persons and organisations involved in investigation and mercantile activities in Australia as well as under other key legislations and formal guidelines and documented standards that are already in place.
6. The Code also embraces precedents established by other professional industry groups such as but not restricted to - e.g. the financial services industry (finance & insurance brokers); legal profession; engineering industry; accounting industry; fire services industry; medical profession; dental profession; chartered loss Adjusters; architects; actuaries; real estate industry are just some. The Code adopts the same initiatives as utilised in most of these professions based on professional accreditation of practitioners through a certification process leading to the issue of Practising Certificates to those persons who meet industry 'best practice' competency standards. The Code also incorporates a CPD scheme to the certification scheme in order to ensure industry practitioners maintain competency in a progressive manner, as applied in other professions.
7. The Code's quality assurance initiative also embraces the Insurance Council of Australia's Code of Practice relating to ongoing training and industry standards application of professional providers - (Refer www.insurancecouncil.com.au - <http://www.codeofpractice.com.au/> Section 1.17(d); Section 3.6(4); Section 3.6 (b); Section 6; Section'; Section 10);

Why is the Code Necessary?

8. To promote a uniform minimum level of professional service delivery and ongoing improvement foundation in service standards for ALL persons engaged in the very responsible roles of formal investigations and mercantile activities in private sector business and government for the dual benefit of industry and particularly the public who are often the recipients and targets of such activities. Any notion of a government department or agency or major corporation relying on their size, influence, key infrastructure service/product power, superior position of power and/or control over a person /customer or smaller entity, in lieu of employing or engaging properly qualified investigation and mercantile personnel, is not permissible. All personnel must be suitably qualified and meet industry qualification standards in order that unconscionable behaviour does not occur, nor perceived to have occurred or perpetrated against the recipient of an investigative or mercantile activity.

9. To protect the health & safety of all Commercial Investigators and Mercantile Agents and persons working in these key business activities within the private sector or government organisations.

10. The licensing guidelines for all Private Investigators and Commercial/Mercantile Agents in Australia are currently State/Territory based legislation and inconsistent from State to State and Territory. There is to date no Federal legislation, notwithstanding that numerous attempts have been made to the Federal Attorney General over the past ten years to do so. The impact of the various State legislations is impractical in terms of industry application and provides unnecessary trading obstacles; and in fact restricts trading opportunities for persons involved in the commercial investigation and mercantile industries. All these licensing regimes restrict the business activities of Commercial Investigators and Mercantile Agents to conduct investigations / mercantile activities to the States/Territory only in which they are licensed. The licensee is prevented from continuing their business activities across a state border unless they hold another license in that State/Territory. This is an unfair impediment of trade which is not remedied by State Mutual Recognition Acts. This is also notwithstanding that the licensee may be engaged by a Federal Government agency/department.

This Code of Practice is the only national industry guideline citing ‘best practice’ standards in all States or Territories of Australia for Commercial Investigators or Mercantile Agents and where State/Territory licensing does exist for these essential business activities, such licensing requirements are insufficient, lack practicality and do not address key issues for the industry such as Continuing Professional Development (CPD), Occupational Health & Safety, Industrial Relations, Fair Trading, Trade Practices issues, and Privacy Legislation and fail to allow investigators and mercantile personnel access to information relevant to a client’s case before a Court, Commission or Tribunal, or to identify possible defendants in a potential common law action, *notwithstanding one’s legal right under the Uniform Civil Procedures Rules (UCPR) to same and exemption under the Federal Privacy Act 1988 in terms of access to such information because the Federal Privacy Act contains an exemption clause relating to contained ‘under another law’*. Refer legal present case - *New South Wales Court of Appeal decision RTA of NSW v. Australian National Car Parks Pty Ltd ([2007] NSWCA 114 (15/5/07))*. **Preliminary Discovery.** (www.aipd.com.au – news articles – Locating Witnesses & Defendants in Civil case Advice)

11. Licensing standards and minimum qualifications vary from state to state/territory in the various licensing regimes and in some states/territories there are no formal or industry based training or any qualification requirement. Notwithstanding this fact, Commercial (Private) Investigators are extensively engaged by key government authorities, statutory bodies, licensed insurers (*under government controlled statutory schemes such as Workers Compensation and CTP/Motor Accident/Injury*), banks, finance companies and the financial services industry and major corporations, to conduct workplace, fraud, insurance, common law investigations; and commercial agents for the purposes of debt collection, repossession of goods and issue of legal process. Uniformity is therefore required in

professional standards and qualifications, through a national accreditation system via certification process, which is remedied by this Code of Practice.

12. Further, it is contestable in the majority of the State based licensing regimes in relation to Commercial Investigations, as to whether a person requires a license at all in order to conduct investigations when engaged by insurance companies or authorised deposit taking institutions (ADI's) under the *Commonwealth Banking Act 1959*.

Application

13. Commercial Investigators and Mercantile Agents provide ever increasing essential investigative and legal support services to Government, Government Departments and Agencies, Corporate entities and the public throughout Australia in areas such as, but not restricted to: - *fraud prevention, detection, assessment and resolution; corporate fraud and risk management services; liquidations; insurance fraud and claims investigation, claims monitoring and assessment; aviation accident & loss investigation; marine loss investigations; OH&S incident investigation; witness location and skip tracing; criminal investigations; child protection investigations; investigative journalism and covert investigative journalism; family law investigations; intellectual property protection services; trademark enquiry; background checking, positive vetting and bona-fides assessment; consumer investigations; missing person investigations; forensic accounting; computer fraud and IT investigation; locating beneficiaries to unclaimed banking, superannuation and investment fund monies*; Mercantile Agents provide the essential services of debt collection, service of legal process and asset repossession and tracing and investigations of persons relating to debts as well as fraud detection, prevention and management. Such services are also nowadays an integral part of the government and private sector business activities. It is therefore essential that this Code of Practice ensures legal compliance of all stakeholders as well as providing the foundation for a qualified, educated and continuous professional development (CPD) process for the benefit of all clients and customers of the private sector and government. Further, to allow scope and planning for future ongoing improvement in training of Investigators and Mercantile Agents wishing to diversify and secure accreditation in varying investigative and mercantile related financial services portfolios. This can only be achieved through quality and informed ongoing industry training to ensure professional standards for this vital industry are met and that Investigators and Mercantile Agents and employees entrusted to conduct investigative work and mercantile roles, are suitably qualified to conduct such activities on behalf of key infrastructure bodies such as government, insurance companies, financial institutions, the private business sector as well as for members of the public.
- 14 **To whom does this Code of Practice Apply and who should comply with this Code of Practice?** This Code of Practice is Non-Statutory and was developed by the AIPD, a leading representative body in Australia for Commercial Investigators and Mercantile

Agents, in consultation with other industry representative bodies, government, insurance industry, financial services industry, as well as other stakeholders and related parties. The purpose is defined clearly in PART A Sections (I). & (II) herein. Persons directly affected by the Code are:

- a) **ALL personnel in both the private and government sectors** who conduct formal investigations, collect debts (including telephone debt collection officers), repossess goods and property, and serve legal process, irrespective of whether they hold, or are required or not required to hold a license under current licensing regimes. *(See Exemption Provisions of this Code for some exemption allowances- PART - A Section 52 herein)*
- b) **ALL personnel in both the private and government sector** who oversee investigations, collect debts, repossess goods property and services, serve legal process irrespective of whether they hold or are required or not required to hold a license under current licensing regimes. *(See Exemption Provisions of this Code for some exemption allowances - PART - A Section 52 herein)*
- c) **ANY person** (other than those denoted in the *Exemption Provisions of this Code ref:- PART A Section 52*), qualified in other trades or professions that in the course of conducting that trade or professional activity, conduct investigations into the private activities of any person; work or business activity of any person; business entity or financial activities of an entity, that traverses into the area of conducting investigative interviews and taking formal statements or a 'Certified' activity under this Code (Refer - PART B Section - 67 herein - '**Certified Activities**'), or the person conducts any investigation activity outside the ambit of their formal training and qualifications or the actual purpose of their occupation or profession that led to their application of an investigation or mercantile activity.

(E.g. 1) A qualified OH&S consultant or rehabilitation person or occupational psychologist attends a person's workplace under instructions of a workers compensation insurer or the employer and conducts an incident investigation, takes photographs, interviews staff and management and takes statements from a witness or other person/s (or the claimant), such a person is required to hold the industry Practising Certificate and meet the investigation industry Certification requirements, being in this instance: holding both formal investigation qualifications and OH&S qualifications).

(E.g. 2) An insurance claims officer arbitrarily or by instruction of his/her employer, elects to extend his/her role of claims processing and management into fraud prevention and investigation of claims, without holding the appropriate nationally accredited qualification. Or the claims officer is instructed by the employer to manage an external investigation activity, process or operation and/or dictate the actual management of a field investigation, impeding the independent professional decision making processes of a qualified external investigator (CPI); In this instance the claims officer is required to hold a Practising Certificate under this Code of Practice and meet the investigation industry Certification requirements, being in this instance; holding both formal investigation qualifications and possibly fraud control qualifications, subject to the activity/ies conducted;

- d) **ANY private sector entity or government entity** (other than those denoted in the *Exemptions Provisions of this Code refer:- PART A Section - 52*), that employs or contracts the services of personnel who conduct formal investigations, collect

debts (including telephone debt collection officers), repossess goods and property, and serve legal process, irrespective of whether they hold, or are required or not required to hold a license under current licensing regimes. (See *Exemptions Provisions of this Code for some exemption allowances- PART - A Section 52 herein*), Such organisations are required to employ suitably qualified persons to carry out these activities, in accordance with this Code of Practice and OH&S law.

- e) Only suitably qualified persons can hold an industry Practising Certificate under this Code being known as a **Certified Practising Investigator (CPI)** or **Certified Practising Mercantile Agent (CPMA)**. An entity cannot hold a Practising Certificate.
15. Where a person or persons or entity owns, commences or purchases an investigation business or mercantile agency operation, the principles must comply with current licensing laws however are not required to hold a Practising Certificate under this Code to operate an investigation / mercantile services business. They are however required to meet all other Code requirements. If they personally involve themselves in the instruction of CPI's or CPMA's in that business or investigation or mercantile activities, they are required to be qualified and hold the relevant industry qualifications and recommendations of the Code. If they are not involved in the activities of the business and are financial partners or investment partners for example, the entity must have a **nominated responsible person** who should be suitably qualified (such as CPI and/or CPMA status), managing the day to day business activity each and every office location of that business where investigation and mercantile activities are conducted from. (*Refer Doc.6.cop*). Failure to do so will be viewed as a breach this Code of Practice and attract investigation by the AIPD and will dealt with in accordance with the Enforcement Provisions of the Code. Remedy will be sought by the AIPD under the Enforcement Provisions of this Code as well as pursuit of legal remedy through State and Federal Courts, in addition to referral for investigation of the perpetrator/s by relevant State and/or Federal Statutory bodies.
16. Non-compliance with or direct ignorance of the Code or inadvertent failure for persons to meet the Code of Practice requirements, may be viewed by the AIPD Board as contempt of an Act of Parliament as well as ignorance of formal government directives in certain situations relating to persons working for government as employees or contractors.

Probity Provisions

17. Persons required under this Code of Practice to hold and maintain a current Industry Practising Certificate, in addition to meeting industry qualification and competency

standards, **must be a fit and proper person**, being a person who does not come under the exclusion provision of a '**Disqualified Person**'. Refer below.

18. A **disqualified person** normally means a person who:-
- a) Has been convicted of a criminal offence under the Criminal Code for an offence involving violence, fraud, dishonesty or theft, being an offence punishable by imprisonment, or
 - b) an offence involving the unlawful possession or use of a firearm or other weapon, or
 - c) an offence involving the unlawful possession or use of a drug, or
 - d) an offence under the Telecommunications (Interception) Act 1979 of the Commonwealth, or
 - e) any other offence declared by any licensing Acts or Regulations to be a major offence for the purposes of this industry Code of Practice, or
 - f) an offence in the nature of rape, offences relating to acts of sexual assault, sexual servitude, kidnapping, procuring for prostitution, child prostitution and pornography, recruiting persons to engage in criminal activity; in breach of any Oaths Act; extortion and fraudulent behaviour;
 - g) a disqualifying offence under any investigation or mercantile agent licensing legislation;
19. The AIPD retains the overriding authority in relation to Certification Assessment determination of any of the above issues against an applicant in respect of the consideration of issuing a Practising Certificate to an applicant and their right to hold membership with a recognised Industry Representative Body (IRB);
20. The AIPD retains the right to publish on its website at www.aipd.com.au, any further Acts, conduct or behavioural matters which would constitute inclusion in the disqualifying person provision;
21. **MINOR OFFENCES PROVISION**
 Consideration of the issue of a provisional Practising Certificate will be given to persons classified as having committed A MINOR OFFENCE. A minor offence means:-

- I. A minor breach of this Code of Practice, or

- II. A breach of Sections 18Q, 18R, 18S or 18T of the [Privacy Act 1988](#) of the Commonwealth is declared to be a "minor offence" for the purposes of [the Act](#).
 - III. Minor Harassment & Coercion – first offence;
 - IV. Minor breaches of a Code of Conduct; e.g. failure to act in a professional manner; failure to adhere to presentation standards;
 - V. Failure to produce required identification when requested;
 - VI. Failure to comply with the Dispute Resolution Scheme, or failure to provide initial DRS information to a client under the requirements of DRS;
22. The AIPD retains the right to publish on its website at www.aipd.com.au, any further Acts, conduct or behavioural matters which would constitute inclusion in the disqualifying persons provision;

Amendments

23. The A.I.P.D. recognises that standards and services are evolutionary and best motivated by embracing the valuable key business management principle of 'continuous improvement', therefore requiring certain amendments be made to the 'Code of Practice' from time to time. Amendments must be managed consistently and transparently in the interest of all stakeholders. This is addressed in two key ways, being the 'Designated Review Dates', (DRD) as well as via the 'Extraordinary Amendment Provision' (EAP) for the Code, a provision retained by the A.I.P.D. The EAP is required in order to accommodate any extraordinary application or industry development that may eventuate from the introduction of new law, principles or technology/ies or processes.
24. We acknowledge that this is the first update of the original National Code of Practice for the industry (first adopted and published - 16.12.2005) and the AIPD has therefore defined that review of the Code should be conducted every four (4) years, identified in the Designated Review Dates Document published on the AIPD website and identified as [Doc.8cop](#) of the Code of Practice Associated Documents.

Objectives of the Code

25. To provide guidance on the industry standards to be delivered by those persons/firms who provide commercial investigative services and mercantile services of debt collection, repossession of property and issue of court process/documents, on behalf of members of the public, business and government sectors.
26. To ensure the opportunity of an equal evidentiary process being available to members of the public, business and the government to ensure that all persons engaged by

government and the private business sector (whether as employees or on a contracting basis) who conduct formal investigations and mercantile activities, hold the recognised industry competency standards and nationally accredited formal qualifications and education to conduct such responsible activities.

27. To promote a uniform minimum level of professional service delivery and ongoing improvement foundation in service standards for **ALL** persons engaged in the very responsible roles of formal investigations and mercantile activities in both private sector business and government for the dual benefit of industry and particularly the public who are often the recipients and targets of such activities. Any notion of a government department or agency or major corporation relying on their size, influence, key infrastructure service/product power, superior position of power and/or control over a person /customer or smaller entity, in lieu of employing or engaging properly qualified investigation and mercantile personnel, is not acceptable. All personnel must be suitable qualified and meet industry qualification standards in order that unconscionable behaviour of this nature does not occur, nor is perceived to have occurred or perpetrated against the recipient of an investigative or mercantile activity that may result in a regulative action;
28. **To ensure that no person or person operating in the responsible activities of formal investigation and mercantile activities in both government and the private sector is above the law or operates outside the laws in Australia;**
29. To maintain and improve the professional standards and services of Commercial Investigators and Mercantile Agents based on industry 'best practice' business principles and provide the basis for positive unification of the Investigation and Mercantile Agent industry. The Code recommends certification of practitioners founded on an accreditation process requiring of ALL persons involved in formal investigation and mercantile activities will secure industry accreditation status evidenced by the issue of an industry **Practicing Certificate** in order to assure professional competency, whether working as an employee in a private company or government organisation, or as a contracted Investigator or Mercantile Agent.
30. To establish a proactive stance in identifying persons involved in Investigation and Mercantile activities that also should be required to hold a license in addition to formal qualifications and an industry Practicing Certificate.
31. To assist in the Continuous Professional Development (CPD) of industry members via ongoing education, qualifications and the certification process of Investigators and Mercantile Agents in Australia, the AIPD has for some twelve (12) years made representations to the NSW Government and the Federal Government to revise Private Investigation and Mercantile Agent laws in Australia and has been proactive in the

promotion of national legislation and the requirement for Private/Commercial Investigators and Mercantile Agents to have access to information in order to be able to appropriately and safely carry out their duties. Unfortunately this has not yet become a reality. The AIPD prepared a draft Federal Bill, identified as '*The Private Investigator's Bill 2005*' in an effort to secure uniform and minimum qualification and professional standards in the Investigation and Mercantile Agent industries and has made representation to Federal Attorney General for consideration of this Bill. The AIPD now wishes to include this Code of Practice as an integral part of that document and proposal to the Australian Federal Government, via the Federal Attorney General's Office. Further, the AIPD will make every endeavour to incorporate this Code of Practice and mandatory industry qualifications as well as mandatory nationally recognised training and qualifications as part of the certification and licensing requirements for all Investigators and Mercantile Agents in every State & Territory jurisdiction, including those working under Commonwealth laws for Commonwealth Government departments and agencies, bearing in mind that there is no Commonwealth licensing in existence at this time. This is to ensure uniformity in the professionalism of the industry, the standards of expertise and product delivery to clients and to ensure the health and safety of all Commercial Investigators and Mercantile Agents.

32. To protect the Health & Safety of all Investigators & Mercantile professionals and their working conditions and to prevent injury and illness to persons engaged in Commercial Investigation or Mercantile work or other persons for whose safety there are obligations and a 'Duty of Care' and a 'Duty of Compliance' owed under the Occupational Health & Safety Acts in Australia.
33. To promote consultation and co-operation between the private business sector, government sector, Investigation firms and Mercantile agencies as well as between Investigation firms and their field Investigator and Mercantile employees, and/or sub-contractors; in accordance with all Occupational Health and Safety laws.
34. To provide practical guidance to implement the requirements of the Occupational Health & Safety Acts and associated Regulations in Australia, including suitable training, education and access to information and CPD.
35. Ensure that risks to the health and safety in the Commercial Investigation and Mercantile Agent industry are identified, assessed and eliminated or controlled in accordance with the OH&S Act and Regulations in each State, Territory, and the Commonwealth jurisdiction.
36. To provide advice to the industry in relation to economic viability factors and supportive guidelines to operate a professional service business. The Code of Practice nor the AIPD in any way intends to specify to clients of Certified Practising Investigators (CPI's) or

Certified Practising Mercantile Agent (CPMA's), the hourly rate of fees or other associated service charges however, CPI's and CPMA's are required under this Code of Practice to fulfil all their legal and commercial obligations when offering their professional services. To assist in this regard we provide a '*Suggested Reasonable Scale of Fees Schedule*' for the various Investigation services and Mercantile portfolios. The suggested schedule (refer "*ANNEXURE C*" hereto) will be assessed every two years and at the Review Dates for the Code of Practice. The services of an independent Actuary or suitably qualified person will be engaged by the AIPD in the review of the '*Suggested Reasonable Scale of Fees Schedule*' "*ANNEXURE C*" taking into consideration the laws and financial factors, pressures affecting services, including but not restricted to: - CPI increases, fuel costs, operating expenses, ongoing training standards and professional development requirements as well as Insurance policies in the area's such as Professional Indemnity, Workers Compensation, Public Liability, Business Insurance and Personnel Accident Insurance, formal qualifications, Certification and CPD processes.

37. To promote continuous improvement in the credibility of Certified Practising Investigators and Certified Mercantile Agents and build ongoing trust and confidence with Government, the corporate sector and the public in the use of Commercial (or Private) Investigators and Mercantile Agents for self regulation.

Scope

38. The AIPD is the leading industry body representing Commercial Investigators and Mercantile Agents in Australia and believes that it has been diligent and proactive in its consultation efforts in the drafting the original industry Code of Practice (first adopted and published on 16.12.2005 and commended by sections of State and Federal Governments in Australia) and having engaged in ongoing open consultation to ratify a formal Review of the Code which was completed on 18 August 2008. The revised *National Code of Practice and Associated Documents List* can be viewed and referenced on the Institute's website at www.aipd.com.au - "*Code of Practice*". We confirm that the consultation process was extensive, encompassing AIPD members, government and major corporations, associations and stakeholders. The process included written and open invitations for submissions to our members and non-members, stakeholders, as well as being published on the AIPD website at www.aipd.com.au
39. This self-regulated Code of Practice sets the precedent for professional standards for Commercial Investigators and Mercantile Agents and those involved in formal investigative roles in government and all private sector organisations. The Code also incorporates a Code of Conduct, current licensing regime requirements and further professional educational and business requirements.

40. This Code of Practice requires any person involved in the conduct of a formal investigation, surveillance activity or any part of mercantile activities (such as debt collection processes, repossession of property, and issue of Court Process) to be suitably qualified to conduct these entrusted and responsible activities. This extends to persons working for third parties in a commercial venture capacity for fee and/or profit; and also persons employed in government (Federal, State or Local Government) and the private business sector as employees in dedicated investigation and mercantile roles.
41. It is incumbent upon a Certified Practising Investigator (CPI) or Certified Practising Mercantile Agent (CPMA) to make their clients in government, the corporate sector and the public, aware of the Industry Code of Practice and the compliance obligations in relation thereto and the Dispute Resolution Process available to them under this Code.
42. An alleged breach of this Code of Practice by a client of a CPI or CPMA (being a member of the public, corporate client of government client) or a member of a recognised representative industry body or a complaint against any of these persons or entities or an industry representative body, will be dealt with in accordance with the Dispute Resolutions Process and if necessary, the Enforcement Provisions of the Code. Any complaint against the AIPD itself will also be subject to the Code's Dispute Resolution Process. *Refer Section 76 herein.*
43. The AIPD retains the right to investigate any alleged breach of this Code of Practice by any person holding a Practising Certificate in accordance with the Dispute Resolution Process and/or the Enforcement Provisions of the Code.
44. The AIPD retains the right to investigate any alleged breach of this Code of Practice by any person or entity (being an employer in a private sector organisation or a government organisation that employs or has employed a person or persons to conduct investigations and/or conduct mercantile activities), that is deemed to have an obligation to hold a Practising Certificate under this Code of Practice.
45. Persons who are deemed to have an obligation to hold a Practising Certificate under this Code of Practice, or employer organisations (including government) that instruct employees to conduct formal investigations and mercantile activities or instruct and manage field personnel or external investigation of mercantile contractors, without suitable qualifications and an industry Practising Certificate, will be deemed to have breached this Code of Practice. Remedy will be sought by the AIPD under the Enforcement Provisions of this Code as well as pursuit of legal remedy through State and Federal Courts, in addition to referral for investigation of the perpetrator/s by relevant State and/or Federal Statutory bodies.

46. The Code is to assist Commercial Investigators and Mercantile Agents who employ or contract other Investigators and those that contract work from large entities such as government departments/agencies, insurance companies, financial institutions and any other major work sources utilising Investigators and Mercantile personnel, as well as statutory authorities, private sector corporations, solicitors and legal firms that instruct Commercial Investigators and Mercantile Agents and any of the abovementioned parties that control workplaces and/or workplace environments, systems of work and processes that affect the health, safety and well being of Commercial Investigators and those involved in Mercantile activities. The Code is to assist these stakeholders and their representatives to comply with the various State, Territory and Commonwealth Occupational Health & Safety Acts & their associated Regulations as well as other key laws such as Industrial Relations and the Commonwealth Independent Contractors Act 2006 as well as having a quality documented Dispute Resolution Process for dealing with complaints by all stakeholders relating to investigation and mercantile services.

Guidelines & Compliance

47. **Based on OH&S laws in all jurisdictions in Australia (all States, Territories and the Commonwealth), it is incumbent upon ALL persons and organisations to meet a recognised industry Code of Practice; recognised and established industry standards; as well as training standards and industry qualification standards.**
48. It is a requirement therefore under this Code of Practice that **ALL personnel** in the **private and government sectors**, who conduct formal investigations or enquiries about persons, property, or financial matters, or collect debts (including telephone debt collection officers), repossess goods and property and serve legal process, conducts surveillance, must hold the relevant qualifications. It is also recommended that they evidence their ongoing competency by obtaining an industry Practicing Certificate, issued by the AIPD via recognised Industry Representative Bodies. (Refer 'Annexure B' herein for required national qualifications). **This includes the following persons:-** (*unless exempt under the Exemption Provision of this Code – Refer: Section 52 herein*)
- I. Any person involved in any part of a formal investigation process or gathering of formal evidence for financial gain or use in any proceedings; or on behalf of an employer or third party for their use or financial gain or potential financial gain, against another person or entity;
 - II. Any person involved in any part of the debt collection process or a mercantile activity for financial gain or use in any proceedings; or on behalf of an employer or third party for their use or financial gain or potential financial gain, against another person or entity, including but not restricted to:-

- a) persons involved in telephone debt collection activities for an employer or under any contract;
 - b) any person gathering evidence as a pre-cursor activity to a mercantile process for financial gain or on behalf of another party e.g. - any person engaged in the activity of car park monitoring for the purpose of issuing an infringement notice or payment notice;
 - c) any person that conducts any surveillance activity for financial gain or on behalf of another party for their financial gain;
 - d) any person that conducts surveillance or enquiries as part of a debt collection scheme e.g - persons monitoring car parks for the purpose of issuing an infringement or claim for payment from another party;
- III. All personnel in the private and government sectors who oversee investigations, instruct internal or external investigators (those under a 'contract of service' or those under a 'contract for service') or collect debts, (including telephone debt collection), repossess goods and property, serve process; must have the relevant qualification, commensurate with their level of responsibility and will maintain a current Practicing Certificate under this Code of practice. (Refer 'Annexure B' herein for required national qualifications).
- IV. All personnel in the private and government sectors that carry out formal investigations and mercantile activities, (including telephone debt collection and any part of the formal investigations/evidence gathering or mercantile process for financial gain or on behalf of another party - or a person that conducts any surveillance activity for financial gain or on behalf of another party for their financial gain - or conducts surveillance or enquiries as part of a debt collection scheme e.g - persons monitoring car parks for the purpose of issuing an infringement or related enquiries) should be a member of a recognised Industry Representative Body. (This quality assurance initiative embraces the Insurance Council of Australia's Code of Practice - (Refer: <http://www.insurancecouncil.com.au/> <http://www.codeofpractice.com.au/> requirements Section 3.6 (b)'.) and must hold the relevant qualification/s. They will maintain a current Practicing Certificate under this Code.
- V. All personnel in the private and government sectors who oversee investigations, collect debts, (including telephone debt collection), repossess goods and property, serve process should be a member of a recognised Industry Representative Body. (This quality assurance initiative embraces the

Insurance Council of Australia's Code of Practice - (Refer: <http://www.insurancecouncil.com.au/> <http://www.codeofpractice.com.au/> requirements Section 3.6 (b).)

- VI. All persons operating as a commercial CPI or CPMA must have in place a suitable **Dispute Resolution Process** (DRP), incorporating an initial complaints handling process. The DRP must be commensurate to their level of operations and the DRP available to public clients, firms and all organisations to whom they provide services. The DPR must comply with the Dispute Resolution Scheme provision of this Code of Practice. (Refer: PART B Section 77 herein - **Dispute Resolution Scheme**). The Dispute Resolution Process must extend to any contracting or sub-contracting CPI or CPMA that carries out work assignments on their behalf, under a 'contract for service'.
49. Companies that employ CPI's and CPMA's must ensure a suitable Complaint Handling Process is in place, meeting the requirements of the DRS of this Code. (Refer: PART B Section 76 herein - **Dispute Resolution Scheme**). The Dispute Resolution Process must extend to any contracting or sub-contracting CPI or CPMA that carries out work assignments on their behalf, under a 'contract for service'.
50. **Factual Investigators**, safety managers, safety consultants and persons **that carry out workplace investigations**, such as workers compensation, OH&S incident investigations, industrial relations, EEO, unfair dismissal and public liability / common law claims, are required under this Code of Practice to hold the required formal qualifications subject to whether they conduct such work activity in the private sector or the government sector or both sectors, as follows:-
- a) **Private Sector** only factual investigators require **both** the following qualifications:-
 - Certificate III in Investigative Services (National Code PRS30303)**
 - Certificate IV in Occupational Health & Safety (National Code BSB40604)**
 - b) **Government Sector** investigators require the following qualifications :-
 - I. **Certificate IV in Government Investigations (National Code PSP41504)** or now superseded Certificate IV in Government Fraud Control - Investigations (National Course Code PRS40499)
 - II. **Certificate IV in Occupational Health & Safety (National Code BSB41604)** or equivalent Certificate IV in Government - OH&S or superseded qualifications - Certificate IV - Workplace Safety (National Code 12174) or Certificate IV in Occupational Health and Safety (1892)

And if duties enter into fraud control, fraud management or fraud monitoring activities, the person also requires-

- III. **Certificate IV in Government – Fraud Control (National Code PSP40604)**
or now superseded Certificate IV in Government Fraud Control – Investigations
(National Course Code PRS40499)

c) **Private Sector Investigators engaged by Government Departments** or Agencies to conduct investigations as previously described herein at *Section 54* require the following qualifications:-

- I. **Certificate III in Investigative Services (National Code PRS30303)**
- II. **Certificate IV in Government Investigations (National Code PSP41504)**
- III. **Certificate IV in OH&S (National Code BSB41604)**
- IV. **Certificate IV in Government Fraud Control (National Code PSP40604)**
if involved in Fraud Control activities or now superseded Certificate IV in Government Fraud Control – Investigations (National Course Code PRS40499)

51. **Mercantile Agents**, or persons employed within any organisation (Government or the Private Sector) that conduct the mercantile activities of Debt Collection, Repossession of Property or issue of legal process, must be suitably qualified and hold the following qualifications, subject to duties and work role:-

a) **Private Sector**

Persons engaged by private sector companies require:-

- I. **Certificate III in Financial Services (Mercantile) FNS30404**
- II. *If a manager of mercantile staff team., also must hold suitable formal nationally accredited OH&S qualification under AQTF Scheme - (Refer 'Annexure B' hereto)*
- III. *If the person's activities extend from basic debt collection (e.g. dedicated telephone debt collection activities) into fraud management and or investigation of persons then - **Certificate III in Investigative Services (National Code PRS30303)** and related suitable formal nationally accredited Fraud qualification under AQTF Scheme - (Refer 'Annexure B' hereto) such as **Certificate IV in Government Fraud Control (National Code PSP40604)** or at the minimum, the Fraud related units under PSP04 educational standards.*

b) **Government Sector**

Persons engaged as employees within by the government sector require:-

- I. **Certificate III in Financial Services (Mercantile) FNS30404**
- II. *If the person's activities extend from basic debt collection (e.g. dedicated telephone debt collection activities) into fraud management and or investigation of persons, collation of confidential information and fraud control, monitoring activities, then -*

Certificate IV in Government Fraud Control (National Code PSP40604) and/or Certificate IV in Government Investigations (National Code PSP41504) at the minimum in accordance with PSP04 educational standards. (The superseded Certificate IV in Government Fraud Control - Investigations would be acceptable National Course Code PRS40499)

III. *If a manager of mercantile staff team., also must hold suitable formal nationally accredited OH&S qualification under AQTF Scheme - (Refer 'Annexure B' hereto)*

c) **Private Sector Mercantile Agents engaged by Government Departments** or Agencies to conduct mercantile activities as previously described herein require the following qualifications:-

IV. **Certificate III in Financial Services (Mercantile) FNS30404**

v. *If the person's activities extend from basic debt collection (e.g. dedicated telephone debt collection activities) into fraud management and or investigation of persons, collation of confidential information and fraud control, monitoring activities, then - **Certificate IV in Government Fraud Control (National Code PSP40604) and/or Certificate IV in Government Investigations (National Code PSP41504)** or now superseded or now superseded Certificate IV in Government Fraud Control - Investigations (National Course Code PRS40499)*

v. Certificate III in Investigative Services (National Code PRS30303)

VI. *If a manager of mercantile staff team., also must hold suitable formal nationally accredited OH&S qualification under AQTF Scheme - (Refer 'Annexure B' hereto)*

Exemption Provisions - Exempt Persons

52. The following person/professionals are exempt from this industry Code of Practice, but variable obligations apply as follows:-

- I. Any current serving **police officer**, provided only that the investigation or any mercantile activity relates to formal police business or operations;
- II. Any current serving **member of the defence forces**, provided only that the investigation or any mercantile activity relates to formal defence force business or operations;
- III. Any government **fire service officer** conducting investigations relating to fire incidents and the investigation activity relates to formal fire service business or operations. Exemption does not extend to related voluntary services such as SES and bush fire brigade officers or mercantile activities;

- IV. Any registered **legal practitioner** holding a Practising Certificate with the relevant Law Society, unless the investigations activity extends to covert operations, such as surveillance, being any area they are not trained; unless the legal practitioner holds the appropriate national qualifications as denoted in this industry Code of Practice and a Practising Certificate (being a CPI);
- V. Any **insurance loss adjuster/assessor** that is formally qualified and a member of the Australasian Institute of Chartered Loss Adjusters; provided their business activities do not extend beyond quantum assessment and settlement of insurance claims and do not venture into the activities of investigation of claims and statement taking activities, tracing witnesses and incident solving;
- VI. A person who is formally qualified in an occupation or profession that as part of that occupation or profession is required to include investigations is an exempt person, provided only that the investigation does not involve the precise causation of accident or incident or conduct of investigation into the private activities of any person, work or business activity of any person, business entity or financial activities of an entity, that traverses into the area of taking formal statements or a 'Certified Activity' under this Code (Refer - PART B Section 67 herein - 'Certified Activities'); - or if the person conducts any investigation activity outside the ambit of their formal training and qualifications or the actual purpose of their occupation or profession that led to their application of an investigation or mercantile activity - the exemption provision does not apply.

(E.g. 1) A qualified OH&S consultant or rehabilitation person or occupational psychologist attends a person's workplace under instructions of a workers compensation insurer or the employer and conducts an incident investigation, takes photographs, interviews staff and management and takes statements from a witness or other person/s (or the claimant), such a person is required to hold the industry Practising Certificate and meet the investigation industry Certification requirements, being in this instance: holding both formal investigation qualifications and formal OH&S qualifications);

(E.g 2) An insurance claims officer arbitrarily or by instruction of his/her employer, elects to extend his/her role of claims processing and management into fraud prevention and investigation of claims, without holding the appropriate nationally accredited qualification. Or the claims officer is instructed by the employer to manage an external investigation activity, process or operation and/or dictate the actual management of a field investigation, impeding the independent professional decision making processes of a qualified external investigator (CPI); In this instance the claims officer is required to hold a Practising Certificate under this Code of Practice and meet the investigation industry Certification requirements, being in this instance; holding both formal investigation qualifications and possibly fraud control qualifications, subject to the activity/ies conducted;

- VII. A person employed by a CPI or CPMA to perform clerical or secretarial functions. Exemption does not extend to office personnel (government or private sector) whose duties involve the instructing, monitoring or co-ordination of external CPI's or CPMA's. Such instructions and direct management can only be carried out by a suitably qualified person, such as a CPI or CPMA;
- VIII. Any person qualified as a security guard or security officer and holding a current security licence under the relevant security legislation that conducts static surveillance of persons or property only. Should a security officer's activities venture into the conduct of formal investigations of incidents, statement taking or enquiries, then such activity is defined as a 'Certifiable Activity' and the person is required under this Code of Practice to secure the relevant qualifications under this Code and recommended to secure an industry Practising Certificate containing the relevant competency endorsement; (*Refer - PART B_ Section 67 - 'Certified Activities'*);

Facilitation Provisions - Certification

53. All personnel that require industry qualifications as indicated in *Sections 14-16, 39-50*, herein (*unless exempt as identified in Section 52 herein*), will be issued with a **Practicing Certificate** by the AIPD on a yearly basis as formal recognition of their qualification and portfolios of competency, as well as their CPD compliance under the industry CPD Scheme.
54. Whilst the AIPD is the only body to issue industry Practising Certificate's to Certified Practising Investigators and Certified Mercantile Agents, Certification can be carried out by other Industry Representative Bodies, provided those bodies meet the National Code of Practice requirements and standards for a representative body and have been registered with the AIPD as an Authorised Certification Body (ACB). The IRB must meet recognised competency standards set by the AIPD for **Certification Assessment**, forming part of the National Code of Practise document. An application must be made on the appropriate [Form Doc.5cop - Application for an Industry Association / Body to secure Certification Assessment Accreditation under the Code of Practice Guidelines of CODE OF PRACTICE ASSOCIATED DOCUMENTS LIST](#).
55. Practising Certificates are issued through the referral of Certification Applications from IRB's and can only be submitted to the AIPD from a recognised Industry Representative Body that has been authorised under the Certification Provisions of this Code of Practice.
56. Certification accreditation of Industry Representative Associations/ Bodies is readily available under this Code of Practice, by an industry body making a formal written request / application to the AIPD on the approved form - [Form Doc.5cop – Industry Association / Body Certification Accreditation Form of CODE OF PRACTICE ASSOCIATED DOCUMENTS LIST](#). Industry bodies must meet the Accreditation Guidelines as denoted therein.

57. The authorised industry Representative Association/Body may charge a fee to its members for the Certification Assessment process, which involves the collation of a range of documents required for submission by the Representative Body on behalf of their member, to the AIPD CMC Committee on the approved Form – (*Refer: Form Doc.4cop Member Practising Certificate Application Form*) for consideration of the issuing of a Practising Certificate to the industry member, via the submitting Industry Representative Body (IRB). The authorised industry IRB however cannot charge their member a fee for the National Practising Certificate. This is charged by the AIPD to the industry member upon issue of a National Practising Certificate and upon renewal of the Certificate required each calendar year from the date of issue. *Refer: Form DOC.10.cop Practising Certificate Renewal Application.*)
58. Where an application for a Practising Certificate is rejected on its factual merit and such refusal is disputed by the referring Industry Representative Body, then the Application may be reviewed under the **Dispute Resolution Scheme – DRS** (Certification) using the Form *Doc.2cop DRS.4cop/ APPLICANT MEMBER CERTIFICATION REVIEW FORM* at the request of the industry member or the industry Representative Body.

Facilitation Provisions - CPD

59. **Continuous Professional Development (CPD) has been included as an ongoing certification requirement for all industry professionals**, involving the accumulation of 20 point system accumulation over a (2) year period from the date of issue of an industry Practising Certificate to an industry professional. Points accumulation requirements and values are identified in the CPD Scheme Credit Guidelines. The CPD Scheme and Points System were established as part of this Code review and forms part of this revised industry Code of Practice effective 15th September 2008. *Refer - Doc.9cop – CPD Scheme Credit Guidelines of CODE OF PRACTICE ASSOCIATED DOCUMENTS LIST.*
60. **Accreditation of Representative Bodies** to offer their members recognised training and other ancillary products to secure CPD credits for their members under the industry CPD Scheme in order for their members to retain an industry Practising Certificate, is available under this Code of Practice by an industry body making a formal written request / application to the AIPD on the approved form - *Refer Doc.7cop - Application for an Industry Association / Body to secure CPD Training Accreditation Provision under the Code of Practice Guidelines of CODE OF PRACTICE ASSOCIATED DOCUMENTS LIST*
61. **The AIPD will retain the authority to audit all recognised Industry Representative Bodies** to confirm financial membership, Certification Services and CPD.

What Constitutes and a Recognised Industry Representative Association / Body?

62. **An industry association must have as a minimum at least fifty (50) members**, have an ABN, a suitable formal Dispute Resolution Process, a suitable Code of Ethics relating to members meeting industry and public expectation, and show they are a legitimate industry body representing the interests of their members to qualify as an industry association. Directors/Principles and key office holders of the Representative Body must meet the industry qualification standards and hold a current industry Practising Certificate as denoted in the Code of Practice and fully comply with the Code as well as all other State/Federal legal requirements. The representative body must have in place a suitable Dispute Resolution Process that meets the COP **Dispute Resolution Scheme** requirements and make this available to their members. The AIPD is exempt from the provisions of the qualification and requirements of the COP for Recognised Industry Representative Association as it is effectively acting in an administrative, compliance investigative and industry issuing management position. This does not prohibit the AIPD from accepting members and offering membership to any suitable person who meet the COP requirements and qualifications.
63. **All recognised Industry Representative Bodies will come under the umbrella of the AIPD who will retain the authority to conduct investigations** in accordance with the **Dispute Resolution Scheme** of the Code of Practice. Such DRS is designed to be transparent, evidentiary and cater for all stakeholder disputes being classified under (3) three separate categories - **Client - Sub-Contractor - Certification**. To further assist in the diligent and fair resolution of complaints of stakeholders, a (3) three-tiered **Dispute Resolution Process (DRP)** is incorporated in the DRS and available to each of these stakeholder groups and involves the relevant professional member's Industry Representative Body and the AIPD, if required. The AIPD holds the authority to take such disciplinary action as it deems necessary against a member of a recognised Industry Representative Body or an Industry Representative Body. Such disciplinary action to be conducted in accordance with the Code of Practice **Dispute Resolution Scheme**.
64. The AIPD issues guidelines about the industry '*best practice*' standards for the Commercial Investigations and Mercantile Agent industry. The purpose of these guidelines is to assist members in meeting their obligations, which incorporates therein, the service providers' required compliance with various Government licensing legislation, OH&S Acts and Regulations and other Government Acts, Regulations and directives. Further, the service providers' requirement to be aware of and comply with all legislation relevant to the their work portfolios, which may include but not be restricted to the following: -

- i. Private Investigators & Commercial/Mercantile Agent Acts in each State and Territory;
- ii. Occupational Health & Safety Acts & Regulations in each State & Territory/Commonwealth jurisdiction;
- iii. Commonwealth Independent Contractors Act 2006;
- iv. Industrial Relations Acts/ Legislation in each State & Territory/Commonwealth jurisdictions
- v. Workers Compensation Acts & Regulations & Workplace Rehabilitation Acts in each State & Territory/Commonwealth jurisdiction;
- vi. Civil Liability legislations in each State & Territory/Commonwealth jurisdiction;
- vii. Motor Accident / Injury Acts in each State & Territory/Commonwealth jurisdiction;
- viii. Personal Injuries Acts / Compensation-to-Relatives Legislation in each State & Territory/Commonwealth jurisdiction;
- ix. Surveillance / Listening Devices Acts / legislation in the relevant State & Territory/Commonwealth jurisdiction;
- x. Workplace Surveillance Acts/Legislation in each State & Territory/Commonwealth jurisdiction;
- xi. Personal Information/ Privacy Protection Acts/legislation in each State & Territory/Commonwealth jurisdiction;
- xii. Evidence Acts/legislation in each State & Territory/Commonwealth jurisdiction - Appropriate storage of evidence
- xiii. Equal Employment Opportunity Legislation in each State & Territory/Commonwealth jurisdiction;
- xiv. Racial Discrimination Act 1975 (Cwlth);
- xv. Disability Discrimination Act, 1992 (Cwlth);

- xvi. Shops & Factories legislation in each State & Territory/Commonwealth jurisdiction;
- xvii. Crimes Acts in each State & Territory/Commonwealth jurisdiction;
- xviii. Taxation legislation;
- xix. Listening Devices Acts;
- xx. Telecommunications Act
- xxi. Privacy Acts / Invasion of Privacy Acts;
- xxii. Trespass Acts;
- xxiii. Fair Trading Acts
- xxiv. State Records Acts
- xxv. Freedom of Information Acts
- xxvi. Public Finance and Audit Act 1987
- xxvii. State Records Guidelines for Records Management
- xxviii. AS ISO 15489 Australian Standard Records Management
- xxix. Codes of Ethical Conduct
- xxx. Bankruptcy Act 1966
- xxxi. ASIC / ACCC Debt Collection guidelines 2005
<http://www.accc.gov.au/content/index.phtml/itemId/733222>
 (ASIC Regulatory Guide RG96, see:- [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ACCC-ASIC_Debt_Collection_Guideline.pdf/\\$file/ACCC-ASIC_Debt_Collection_Guideline.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ACCC-ASIC_Debt_Collection_Guideline.pdf/$file/ACCC-ASIC_Debt_Collection_Guideline.pdf))
- xxxii. Section 116 of the *Bankruptcy Act 1966* and state and territory legislation relating to the recovery of judgment debts excludes these items from seizure by creditors
- xxxiii. legal requirements and obligations to store electronic records – disaster recovery system – data retention policies

65. The CPI and CPMA should be aware of and have knowledge of the various legislations and standards that relate to their particular portfolio of services and should ensure the field operative they engage by employment or contract, is qualified and certified to perform the said work activities. The Code's CPD Scheme will reiterate knowledge in the related legislations.
66. The Code guidelines are also established for the positive pursuit of *'best practice'* principles in the following **Certified Activities**, but not restricted to these activities, which may be expanded upon as part of this Code resultant from ongoing industry consultation and ongoing improvement and the broadening scope of the profession.
67. **CERTIFIED ACTIVITIES**

1) **Investigations**

- i. Insurance Investigations – General Claims (Factual & Surveillance portfolios)
- ii. Workers Compensation / Scheme Investigations (Factual & Surveillance portfolios)
- iii. Public / Civil Liability (Factual & Surveillance portfolios)
- iv. Professional Indemnity / Negligence
- v. CTP / Motor Accidents Scheme Investigations (Factual & Surveillance portfolios)
- vi. Fidelity Loss/ Guarantee (Factual & Surveillance portfolios)
- vii. Marine Insurance Investigation (Factual & Surveillance portfolios)
- viii. Intellectual Property & Copyright/Trademark Fraud, screening and monitoring Investigations (Factual & Surveillance portfolios)
- ix. Occupational Health & Safety Investigation / Workplace Investigations (Factual & Surveillance portfolios)
- x. Corporate Investigations (Factual & Surveillance portfolios)
- xi. Security & Risk Investigations (Factual & Surveillance portfolios)
- xii. Government Investigations (Factual, Fraud Control & Surveillance portfolios)
- xiii. Government Fraud Investigations (Factual, Fraud Control, Inspections & Surveillance portfolios)
- xiv. Corporate Fraud Control & Loss Prevention (Factual & Surveillance portfolios)
- xv. Criminal Investigations (Factual & Surveillance portfolios)
- xvi. Child Protection & Assessment (Factual & Surveillance portfolios)
- Includes civil and criminal incident claims such as bullying, assault, victimisation and incidents in schools, child care centres and institutions, hospitals, church care or institutions of trust where child attend or remain under care
- xvii. Immigration (Factual, Fraud Control & Surveillance portfolios)
- xviii. Liquor Licensing & Casino Investigations (Factual, Fraud Control & Surveillance portfolios)

- xix. Aircraft Accident & Safety Investigation
- xx. Liquidations
- xxi. Forensic Accounting & Assets Investigations - Tracing
- xxii. General Fraud Investigations (Factual & Surveillance portfolios)
- xxiii. Information Technology (IT)& Internet Fraud and associated investigations - evidence retrieval and tracing of information and individuals
- xxiv. Information Technology (IT) and computer surveillance / investigations
- xxv. Domestic Investigations (Factual & Surveillance portfolios)
- xxvi. Peace of Mind Investigations (Factual & Surveillance portfolios)
- xxvii. Family Law (Factual & Surveillance portfolios)
- xxviii. Consumer Protection Investigations (Factual & Surveillance portfolios)
- xxix. Witness Location & Skip Tracing Investigations (Factual & Surveillance portfolios)
- xxx. Missing Persons Investigations (Factual & Surveillance portfolios)
- xxxi. Technical Surveillance Counter Measures (TSCM) - debugging
- xxxii. Armed Holdup Investigation
- xxxiii. Covert Operations (Factual & Surveillance portfolios)
- xxxiv. Covert Investigative Journalism (Factual & Surveillance portfolios)
- xxxv. Background & Assets Investigation (Factual & Surveillance portfolios)
- xxxvi. Fire & Arson Investigations
- xxxvii. Employment and Pre-Employment Investigations - Positive Vetting
- xxxviii. Road Accident Site Reconstruction & Forensic Investigations
- xxxix. Unclaimed Monies Investigations and tracing
 - xl. Security Investigations - formal investigations of incidents, statement taking or enquiries;
 - xli. Car park surveillance for commercial gain (other than for licensed security activities) - e.g. to gather evidence for use against another party as part of a debt collection scheme;

2) **Mercantile Activities**

- I. Credit Control officers and managers
- II. Telephone debt collection and debt management officers
- III. Issue of Process/Subpoenas
- IV. Repossession activities
- V. Customer field Debt Collection and related financial trust account management
- VI. Skip Tracing & Locating Debtors and Assets
- VII. Investigation of debtors
- VIII. Asset Tracing & Investigation
- IX. Government debt collection

- X. Government debt collection activities in trust and for third parties
- XI. Car park infringement officers issuing fines or financial claims in government or the private sector, under a car park penalty scheme for financial gain of a government agency or person, employer or entity
- XII. Examination of Debtors and officers of entities either in a written form of an oral examination in a court of law.

3) **Minimum Educational Requirements**

- I. The Code's minimum level industry education / qualification levels are mandatory for current industry practitioners as well as new entrants to the industry and incorporate and surpass the current educational requirements in all State/Territory Government licensing. The minimums embrace the DEST/AQTF qualifications under the AQF as well as government directives and training agreements such as PSP04. The Certification Assessment allows for previous experience and qualifications recognition prior learning (RPL) or experience in order to secure specific practice portfolio endorsements on an industry member's Practising Certificate. *Refer ['ANNEXURE B' - CODE OF PRACTICE 'Qualifications Schedule'](#).*

4) **Specialist Education**

- I. Where an investigator or mercantile agent wishes to conduct business practice in a specific skilled portfolio as indicated in *Sections 67.1 and 67.2* herein - a '*Certification Endorsement*' is required under the Code's Certification Assessment Process. (See Certification Process under [PART A - Section 47 - Guidelines & Compliance](#) of this Code) based on industry qualifications and competency to practice such work activity.
- II. Certification Assessment allows for previous experience and qualifications recognition (RPL) in order to secure specific practice portfolio endorsements on an industry member's Practising Certificate.
- III. New applicants to the industry must satisfy the minimum educational requirements and may be issued with a Provisional Practising Certificate however must work for a period of 12 months, under the instruction of a CPI or CPMA either on a sub-Contract or full-time employment basis. Some '*Certified Activities*' require several qualifications to practice. CPD educational credits will allow a participant to specialise their practice in lateral portfolios, subject to the Certification Assessment process. *Refer ['ANNEXURE B' - CODE OF PRACTICE 'Qualifications Schedule'](#)*

IV. The CPD course criteria will be inherently updated and expanded, resultant from ongoing industry and stakeholder consultation. This will include industry bodies, stakeholders and DEST and relevant government training authorities in order to accommodate the needs of clients and ensure ongoing improvement in the professional standards of service.

5) **Mercantile / Investigation - Dual Roles**

Where an industry professional is involved mainly in Mercantile activity, however such activity does or is likely to overlap into an investigative role (such as investigation of persons, surveillance of persons or assets), then the CPMA must secure an endorsement on his/her Practising Certificate, authorising the specific Investigation activity. This is available provided they meet the required qualification and competency standards under this Code of Practice and apply for the endorsement via the Code's Certification Process.

68. Persons that hold a CPI certificate and wish to conduct any Mercantile activity, must secure a CPMA certificate before practicing.

Citation

69. This Code may be cited as the **National Code of Practice for Investigators and Mercantile Agents in Australia** based on the evidence the AIPD holds on record in respect of a proper consultation process having been conducted with AIPD members, industry representative bodies, OH&S Authorities, Federal and State Governments, insurance and finance industry and other key industry bodies and stakeholders across Australia.

70. The Code relates to all persons that are involved in carrying out of any formal investigations and mercantile activities in the private sector and government sector or and all persons involved in these activities in the workplace in all States, Territories and the Commonwealth jurisdiction in Australia unless exempted as defined in this Code under '*Exemption Provisions*' refer - PART A - Section 52.

Effective Date

71. This Code is set down to take effect from **15th September 2008**.

PART B :

Code Commitments

Legal Obligations	...40
Dispute Resolution Scheme	...40
Business Compliance Provisions	...43
Human Resources Management & Occupational Health & Safety	...44
Constitution	...50
Consultation	...50
I. Code Management	...50
II. Standards Development	...51
Conduct of AIPD Directors, Committee Members and Staff	...52
Responsibilities and Remuneration of Executives & Committee Members	...53
Conduct of Certified Practising Investigators (CPI's) & Certified Practising Mercantile Agents (CPMA's)	...53
Enforcement Provisions	...54
Breaches by Directors of Corporations or Business Entities	...56

Professional Misconduct Provisions	...56
Penalty Notices	...57
Extraordinary Amendment Provision	...58
Fees & Charges	...59

PART B

Legal Obligations

72. Non-compliance with or direct ignorance of the Code or inadvertent failure for persons to meet the Code of Practice requirements, may be viewed by the AIPD Board as contempt of an Act of Parliament and dealt with under the Enforcement Provisions of this Code of Practice.
73. Because the provision of the investigative services and mercantile services form an integral part of corporate and government activities as well as paralegal activities in respect of evidence gathering in respect of matters before the Courts, Tribunals, Boards of enquiry, Commissions etc., and under State and Federal legislations such as Civil Liability Acts, WorkCover/Workers' Compensation Acts, CTP/Motor Accidents Acts; Trademarks & Copyright; Criminal; Occupational Health & Safety; Family Law; Child Protection and many other legislations other than indicated above and also include utilisation of investigative and mercantile services by members of the public to prepare a defence in matters before the Courts, Tribunals, Commissions etc., it is acknowledged that all industry professionals have a responsibility to be fully informed as to their legal compliance requirements and that they meet such compliance in their entrusted professional capacity.
74. All CPI's and CPMA's in Australia must comply with the present relevant State/Territory Investigators' and Mercantile Agents Licensing legislations and any educational guidelines set in that legislation as well as the educational requirements set out in this industry Code of Practice. The Code embraces and surpasses current licensing regime standards and Code standards are based on current government approved and endorsed DEST National Courses (AQTF) under the Australian Qualifications Framework (AQF) and industry standards which are subject to ongoing improvement; and also credible courses and certifications established by the industry itself under the CPD Scheme. All CPI's and CPMA's in Australia must comply with the Occupational Health & Safety Legislations which require ongoing improvement and training.
75. All CPI's and CPMA's in Australia must comply with all other legislation associated with their certified portfolios of service and permitted scope of business operations.

Dispute Resolution Scheme

76. The Code's Dispute Resolution Process is formulated to assist and satisfy all parties involved in the utilisation of investigation and mercantile services, being divided into (3) three separate categories as follows:-

- **Client disputes**
- **Member disputes**
- **Certification disputes**

77. If any party requires lodging a dispute resultant from dealings with a CPI or CPMA, then they can do so by using the appropriate Dispute Resolution Form. A client of a CPI or CPMA must firstly make a formal complaint to the CPI or CPMA and engage in the provider's compliant handling process in an attempt to secure resolution. If the complaint cannot be settled under the CPI's CPMA's compulsory complaints handling process, the Client is then able to access the Code's **Dispute Resolution Scheme (DRS)**. The DRS has a **(3) three stage framework in order to provide the process for expedient settlement of disputes made against a CPI or CPMA.**

STAGE 1 of Dispute Resolution Scheme (DRS)

- 1 The complainant (client of CPI / CPMA) lodges a formal complaint on the approved form '*Complaint Form*' – Doc.2cop [DRS.1A](#) form with the CPI / CPMA identifying the basis of the complaint and what is required for remedy as described above.
- 2 The CPI / CPMA is required to respond to the client in writing within 7 days upon receipt of the complaint form and make all reasonable attempts to deal with the complaint and settle and dispute.

STAGE 2 of Dispute Resolution Scheme (DRS)

- 3 If the dispute cannot be settled within 21 days by negotiation between the parties, then the Client may access **Stage 2** of the DRS by lodging a Doc.2cop - [DRS.2A](#) form with the CPI's / CPMA's representative body.
- 4 The industry representative body then assigns a case officer (*who must be a CPI or CPMA as the case requires*) to assess the dispute and requests lodgement of a DRS response form from the CPI / CPMA within 7 business days. The member, when notified must supply copies of ALL documentation relating to the complaint/dispute to the representative industry body for assessment with the approved form - **Stage 2** – Doc.2cop- [DRS.2C/IRB](#). The case officer is required to allocate the matter a DRS file reference number, advise the complainant of same and send a copy of the DRF forms to the AIPD's Complaints Officer for evidentiary record on the CPA's / CPMA's file. The case officer then provides objective suggested solutions to arbitrate and resolve the dispute between the parties. If the dispute cannot be resolved within 7 business days, then the Client may request a further assessment under **Stage 3** of the DRS.

STAGE 3 of Dispute Resolution Scheme (DRS)

5. Requires the Client to lodge a Doc 2cop **DRS.3A/AIPD** (quoting the DRS file reference number) **by the member's representative industry body** to the AIPD Complaints Officer (*who must be a CPI / CPMA as required*), within 7 days of a complainant's request for a **Stage 3 Assessment**, with all previous file documentation.
6. Once received the AIPD Complaint's Officer will assess the material and will conduct all necessary enquiries with any of the parties and thereafter obtaining all the facts of the disputes, positions and suggested remedy from the parties, make recommendations to the disputing parties to settle dispute. If the settlement advice is not acceptable to the either parties, then the relevant Complaints Officer may refer the matter to the AIPD **Code Management Committee** (CMC) for final assessment, consideration and recommendations of settlement. If the terms of settlement cannot be reached at this point, the AIPD is able to refer the matter to an external arbitrator selected from a panel list of 'qualified arbitrators/mediators' for mediation. This process requires the complainant to pay a nominal fee charged by the arbitrator/mediator.

78. **Confidential Information**

The CPI/CPMA, the Industry Representative Body and the AIPD officers are bound to protect all information obtained and provided by all parties in relation to a dispute, in accordance with the Federal Privacy Act., NPPs and this Code of Practice; are prohibited to disclosure of any related confidential information to any parties, unless required to by law to do so.

79. All persons operating as CPI's / CPMA's as sole-traders or as a business/company, must have in place a suitable formal **Complaint Management Process** commensurate to their level of operations and make this available to public clients, firms and organisations to whom they provide services.

80. The CPI or CPMA business operation (that is not a sole-trader) must have an approved **Complaint Management Process** in accordance with this Code requirements of satisfying (2) categories being:-

- Client complaints; and
- Sub-Contractors complaints

81. An industry Representative Association / Body must have an approved Dispute Resolution Process in accordance with this Code, satisfying (3) categories being:-

- Members' Clients
- Members' Sub-Contractors
- Certification complaints

82. Where a CPI /CPMA has a complaint against an industry body it may lodge a complaint to the AIPD on the approved Form - Doc 2cop [DRS.5/ICF/CPI/CPMA](#). The complaint will then be managed under the DRS.
83. Where a CPI or CPMA has a complaint relating to a client activity, practice, OH&S issue or any other industry practice issue, a complaint may be made to their industry body or directly to the AIPD on the approved Form - Doc 2cop [DRS.6/ICF/General/CPI/CPMA](#). The complaint will then be managed by the designated complaints officer at the IRB and/or the CMC at the AIPD for recommendations and action.
84. Where an Industry Representative Body (IRB) has a complaint against an industry member, it may lodge a complaint to the AIPD on the approved Form - Doc 2cop [DRS.7/ICF/IRB/cpi/cpma](#). The complaint will then be managed under the DRS.
85. Where an Industry Representative Body (IRB) has a complaint against an industry body, or other industry party, or the AIPD itself, the IRB may lodge a complaint to the AIPD on the approved Form - Doc 2cop [DRS.8/ICF/IRB](#). The complaint will then be managed under the DRS and CMC, and if appropriate, the full board of the AIPD.

Business Compliance Provisions

86. Where a CPI or CPMA successfully negotiates a 'contract for services' with a client and require utilisation of the services of a sub-contract CPI or CPMA to fulfil the contract, then the conditions agreed to in the contract in place between the Head Contractor (being the client) and the contracted CPI or CPMA, do not apply to the sub-contract CPA or CPMA unless all such conditions are clearly identified and agreed to in a separate contract formalised between the contracted CPI / CPMA and the sub-contracted CPI / CPMA.

Insurances

87. Professional Indemnity Coverage

A commercial CPI or CPMA must hold Professional Indemnity Insurance cover commensurate with their financial scope of contracts and services provision exposure. The minimum cover for a sole-trader operator CPA / CPMA or single director/principle of an Investigation / Mercantile Agent firm is suggested as \$5,000,000.00. Should the CPI / CPMA firm employ more than (2) two CPI's / CPMA's then the suggested cover of at least \$10,000,000.00 should be considered. The Code does however require all CPIs and CPMA's to hold Professional Indemnity insurance cover. It is strongly advised that all CPI's / CPMA's consult a qualified and certified Insurance Broker or insurance company that is licensed to offer such insurances, for expert advice to

best suit your business needs. Production of evidence of a current Professional Indemnity insurance policy is a requirement condition of the annual Practising Certificate renewal process.

88. Public Liability Coverage

A commercial CPI or CPMA must hold Public Liability Insurance cover commensurate with their financial scope of contracts and services provision exposure. The suggested minimum requirements for a sole-trader operator CPI / CPMA or single director/principle of an Investigation / Mercantile Agent firm would be \$10,000,000.00 cover. Should the firm employ more than (2) two investigators than a cover of \$10,000,000.00 is suggested, however we specifically recommend you consult a qualified and certified Insurance Broker or Insurance Company licensed to offer such insurances for expert advice to best suit your business needs. Production of evidence of a current Public Liability policy is a requirement condition in the annual Practising Certificate renewal process.

89. Workers Compensation Insurance

All CPI's and CPMA's Workers Compensation Insurance must be held and current at all times where legally required in the relevant jurisdictions, in accordance with the various State and Territory Workers Compensation laws. Production of evidence of a current Workers Compensation Insurance cover is a requirement condition in the annual Practising Certificate renewal process.

Human Recourses Management & Occupational Health & Safety

90. The AIPD is committed to the promotion of sensible and acceptable standards of employment and industrial relations between Certified Practising Investigators / Certified Practising Mercantile Agents operating commercial and their engaged employee or sub-contracting CPIs / CPMA's, as well as ensuring compliance with Occupational Health & Safety laws.
91. CPI/CPMA firm directors and managers must ensure the provision of sensible and safe working conditions for any of their employees or sub-contractors in accordance with OH&S Laws & Regulations applying in each State and Territory and the Commonwealth jurisdiction if conducting work for a Commonwealth Department or Agency.
92. It is important to note that in a '*contract for services*' agreement, the client is the head contractor and has an obligation to appropriately manage the OH&S issues relating to the work to be performed on their behalf. This includes the health and safety of any sub-contractor or employer CPI / CPMA that is engaged to perform the said investigation / mercantile work on behalf of the firm. Whilst the contract the firm formalises with the

sub-contract CPI / CPMA is a separate common law contract, such a contract DOES NOT and CANNOT absolve the firm or the Head Contractor (your client) from the obligations owed to the performer of the actual work activity, under OH&S law and regulations; that is to ensure the health and safety of the work performer. A formal and open consultation process and due management are required between all the parties. The implementation of an Australian Standard AS:4801 OH&S Management System is an ideal application to assist in the correct management of these obligations.

93. CPI / CPMA firm Directors and Managers must ensure the sensible, safe and reasonable provision of working conditions and safe systems of work exist for both employees and sub-contractors.
94. Should a complaint or dispute emerge regarding an OH&S issue then such issue or issues should be dealt with promptly under the CPI/CPMA firm's OH&S Management System requirements. It is important to note that it is illegal to ignore an OH&S complaint from a worker, or fail to address such an issue, or to chastise or cause loss to a person for their making of an OH&S complaint. Should the sub-contractor CPI /CPMA's complaint relate to a system of work or process requested to be followed by the client (the Head Contractor), it is the legal requirement of the contractor (firm CPI / CPMA) to report that complaint or issue of concern to the client for proper consultation and management between the ALL the parties, under OH&S law. Appropriate consultation should be conducted for the purpose of securing a remedy and or/improvement in any questionable system, activity or process utilising the 'hierarchy of controls'.
95. Where such a complaint or concern is made to a CPI / firm by a sub-contracted CPI / CPMA and not appropriately addressed by the client (head contractor), the CPA / CPMA is obliged under this Code of Practice to report the OH&S issue to their Industry Representative Body (IRB) on the approved form - [Doc3.cop - OHS.1/CP/CPMA](#) and provide a copy of that document to the AIPD Complaints Officer, attached to a *Form* - [Doc3.cop - OHS.2/AIPD](#). The complaint will then be addressed under the Code's **DRS**. Any illegal activity of by any party/ies is in relation to OH&S will be required to the Statutory OHS Regulatory Authority for investigation.
96. Any dispute that may arise between the CPI / CPMA firm and their engaged CPI / CPMA should be firstly dealt with via the firm's evidentiary **complaint handling process**. This provision should also be contained in the '*Contract for Services*' agreement or any '*Contract of Service*' employment agreement, between the parties as the case may be and is a formal requirement of CPI's and CPMA's under this Code.
97. CPI/CPMAs must ensure that they hold suitable educational qualifications in OH&S in accordance with the minimum Nationally Accredited OH&S Qualification Standards identified herein at **Annexure 'B'** identified as '*Code of Practice Suggested Qualifications Schedule*', commensurate with their level of responsibility. This essentially requires any person holding a supervisory role or management position within a major company or government department or agency that is responsible for the management of the portfolio of Investigations and Mercantile Agent activities (and the related field staff whether they

- are direct employees or a contracted CPI/CPMA firm), in terms of 'best practice' and 'due diligence', should apply the appropriate level of OH&S education/qualification and training. (E.g. a nationally accredited qualification - Certificate IV in OH&S BSB41604).
98. CPI /CPMA firms Directors, Principals and Managers should ensure that fees paid to their employed or sub-contracted CPI's / CPMA's are reasonable and realistic for all parties to meet their legal and industry obligations. A suggested reference to fees (taking into consideration 'best practice' standards and educational qualifications, OH&S Law and other operational requirements), is attached hereto at **Annexure 'C'** identified as '*Suggested Reasonable Scale of Fees Schedule*' to assist industry members and stakeholders.
 99. Certified Private Investigation firm Directors, Principals and Managers, Certified Practising Mercantile Agent firm Directors, Principles and Managers should carefully consider their legal obligations and industry obligations and financial overheads when negotiating fee structures with their clients. It is very important to understand that any services agreement to supply services is between the CPI/CPMA firm and the client and those contract conditions or agreed processes to conduct the investigation work or mercantile activities CANNOT be arbitrarily forced upon a sub-contractor CPI / CPMA. A separate '*contract for services*' must be negotiated and formalised between the sub-contract CPI / CPMA person or firm and any requirements of the Head Contractor (the client) must be related to and agreed to between the CPI/CPMA firm and the sub-contract CPI/CPMA in a separate contract. The Federal Independent Contractors Act 2006 must also be honoured at all times allowing the sub-contract CPI/CPMA independent decision making ability when conducting the work activity. If this ability is not protected and respected, the CPI/CPMA firm may be exposed to legal default resulting in potential considerable financial implications for the Head Contractor and the CPI/CPMA firm, if the status of the engaged CPI/CPMA is viewed as or proven to be an 'employee' relationship rather than a true contract for professional services. The level of 'control' imposed over a contracted CPI/CPMA and sub-contract CPI/CPMA, should always be closely examined and true independence of the contractor and sub-contractors maintained.
 100. The '*Suggested Reasonable Scale of Fees Schedule*' shall be reviewed from time to time by an independent actuary or suitably qualified person, appointed by the Executive Committee of the A.I.P.D and the findings reported to the AIPD. The Schedule may be varied from time to time in the interest of maintaining impartiality, fairness and realistic suggestive professional fee guidelines for the industry for a CPI / CPMA to remain economically viable taking into consideration the level of education and qualifications required of its practitioners to operate legally as well as all other legal requirements to be met.
 101. Investigation / mercantile agency firms, their employees and sub-contractors must comply with the OH&S Safety Legislations in Australia relevant to their size of operations and risks associated with the work being performed. They must ensure that

they meet their obligations under the OH&S Acts and associated Regulations, including and without exception, the legal requirements of OH&S Consultation & Policy implementation with all stakeholders.

102. It is a legal requirement and a requirement under this Code of Practice, for CPI / CPMA firms and sole-trader CPI's/CPMA's to consult with their clients in all instances in relation to OH&S issues and policies and ensure that their client or potential client is aware of your OH&S legal obligations and their own obligations in order to protect the health and safety of CPIs and CPMA's actually performing the field work and not do anything that may exposure or place the field operator in a position of unassessed risk or any improperly managed risk situation or danger. These issues must be managed with evidential support documentation and included as part of services contracts. Such provisions require appropriate OH&S 'due diligence' reference and risk management provisions, compliance and application. The mere citation only by the Head Contractor in any contract, that the contract CPI / CPMA must ensure compliance with the OH&S Act and Regulations alone is certainly not sufficient. OH&S consultation is required by law to be an open, two-way process and an ongoing one, with an appropriate evidentiary support system, consistent with the relationship. It cannot be a dictatorial one-way instruction in a contract with no input provision or capability from the contracted party who is engaged to conduct the investigation / mercantile activity on behalf of the client.
103. It is deemed 'best practice' that CPI / CPMA firms have OH&S policies clearly defined and incorporated in any Agreements or '*Contract for Services*' in addition to being supported by each party having in place a suitable OH&S Management System in accordance with AS/NZS 4801; & AS/NZS 4804 (including Risk Management at AS/NZS 4360:2004) and an appropriate process of consultation between the all the parties in relation to occupational health and safety management.
104. Hazard Identification should be carried out and a suitable process for the conduct of Risk Assessments conducted on each and every assignment referred to a CPI / CPMA by the client and in turn the same process applied by the CPI/CPMA before allocation to a field CPI/CPMA. The persons conducting these risk assessment are to be suitably qualified to do so and must hold the appropriate qualifications as required under this Code of Practice as indentified in **Annexure 'B'** of this Code of Practice entitled - '**Code of Practice Suggested Qualification Schedule**'. Further, that proper risk assessment procedures and hazard identification be conducted on the general work system or processes employed by the involved organisations. The application of appropriate controls under the '*Hierarchy of Controls*' must be applied in order to best alleviate, remove or manage any identified hazard and secure the optimum reductions in the associated risks relating thereto. Further, to provide an evidentiary process to regularly review these control measures through the implementation of an appropriate OH&S System (AS:4801).
105. Further, that the instructing officer of the CPI/CPMA firm is required to provide all the relevant information that is actually available regarding the assignment in order for the field CPI/CPMA to safely self-assess the risks involved and safely perform the

investigation / mercantile activity. The withholding or non-disclosure of any material facts by the CPI/CPMA Firm or it's client is a breach of OH&S law and should the withholding of known information place the field CPI/CPMA in a dangerous, vulnerable or unsafe situation, such actions will be viewed as a serious breach of this Code of Practice and attract the enforcement provisions of the Code.

106. If the client (Head Contractor) believes there is a conflict of legislation such as OH&S law -v- Privacy law whereby the release of file information to a CPI/CPMA or sub-contractor CPI/CPMA may breach Privacy law, then it can only be suggested that this dilemma be addressed by the party issuing the instructions and that party should seek legal advice before delegating the matter to the a contract CPI/CPMA firm. The question that must be of paramount importance is: - *Should privacy override exposing an engaged worker to a potentially dangerous workplace or workplace situation, system of work or suspect work environment issue and place the field CPI/CPMA in a vulnerable position by not being privy to said information?*
107. CPIs / CPMA firms are required to apply the optimum control measures to manage the risks associated with their business activities and their employed or sub-contracted CPIs/CPMAs. Both parties retain the right to negotiate an increase in chargeable fees for any particular assignment in order to accommodate and manage the agreed risk exposure, using premium risk management rather than applying a complete risk avoidance philosophy.
108. CPI and CPMA firms must stipulate clearly to their clients any 'Fee Charge-Out Centres' or other cost saving initiatives they offer and clearly indicate the commencement point of fees for professional time as well as kilometre charges and all other expenses associated with services of an investigation or mercantile activity. The accepted industry standard for field services is that professional charges commence from a designated office location, including travelling time to and from an assignment location at the professional's normal rates. Kilometre fees (and any other associated travelling expenses), normally apply from the same designated office location, to and from the assignment location. The cost-sharing of travelling fees and expenses over numerous assignments located in a similar region, is accepted as normal industry practice.
109. CPI and CPMA firms should be careful not to arbitrarily impose or unconscionably enforce the agreed conditions of their contract held between them and their client upon a sub-contract CPI / CPMA. Such issues may relate to Fee Charge-Out points for travelling time and kilometre fees or a cost reduction program or a 'discount scheme'. It is mandatory that the CPI / CPMA firm ensures the independence of any sub-contract CPI / CPMA in compliance with the Independent Contractors Act 2006 and that the firm openly discuss their client's requirements with the sub-contract CPI/CPMA and ensure that the sub-contract CPI/CPMA has the opportunity to negotiate professional fee

applications and working conditions with the sub-contract CPI / CPMA independently of the Head Contractor (client).

110. Should any fee reduction request of the CPI / CPMA firm be made upon a sub-contract CPI/CPMA which falls outside the contract between them, then the sub-contract CPI/CPMA is entitled to apply his/her normal agreed professional fees, in addition to the regular travelling and kilometre rates and all associated reasonable expenses as per their contract. It is matter for the CPI/CPMA firm to meet their contractual obligations to their client as well as the contractual obligations to the sub-contractor. Should for instance a CPI/CPMA's client not agree to pay reasonable overnight accommodation fees or living away allowance fees on a particular assignment or project, this is a matter to be addressed by the CPI/CPMA firm themselves with their client and cannot arbitrarily be imposed against the sub-contractor CPI/CPMA. Agreement must be sought from the sub-contractor CPI/CPMA in this regard, before conducting the work. If the CPI/CPMA firm fails (for any reason) to alert the sub-contractor CPI/CPMA of such issues or negotiate same before the CPI/CPMA is required to conduct the assignment, the CPI/CPMA is rightly permitted to apply his/her normal charges relating to such genuine reasonable expenses.
111. Any unconscionable behaviour perpetrated by a CPI / CPMA firm against a sub-contract CPI/CPMA would be regarded as professional misconduct under this Code of Practice and if proven, the parties would be dealt with accordingly under the 'Enforcement Provisions' and findings referred to the relevant Government Statutory Authorities.
112. It is incumbent upon the CPI / CPMA firm to agree to pay all reasonable expenses associated with any assignment to a sub-contract CPI / CPMA. This is in accordance with 'best practice' by every other professional organisation for their members.
113. The CPI / CPMA firm is generally obliged (unless formal agreement is reached previously) to pay for all the sub-contract CPI / CPMA's professional's time, including administration time and all expenses associated with the compilation of a report and preparation of evidence by the CPI/CPMA at their normal rates, in respect of each assignment conducted. This includes for investigators video evidence review time and copying of video evidence to tape or digital format; video capture work; annexures preparation, typing of statements, preparation of affidavits and any evidence to be produced to the CPI / CPMA firm and/or their client. This is in accordance with 'best practice' standards.
114. The CPI / CPMA firm must ensure their Managers, Supervisors, employed CPIs / CPMA's and contractor CPIs / CPMA's are suitably qualified and trained to perform the duties required of them and ensure that they have access to suitable training programs and that ongoing training is available. This is a requirement under the Occupational Health & Safety Acts & Regulations in all jurisdictions and under the CPD Scheme

associated with this Code of Practice. The Code's required CPD Scheme may assist CPIs / CPMA's greatly in this regard.

Constitution

115. In the AIPD articles of association there is a clear expression of aims and purpose as an organisation. The AIPD has been established since 1992 and is a non-profit organisation limited by guarantee.

Consultation

Code Management

116. The Code of Practice is to be managed by the **Code Management Committee (CMC)**, being a committee consisting of (6) six persons. The Chairperson will be appointed by the board of the AIPD and two others nominated by the AIPD. The other three persons will be appointed by the Recognised Industry Associations defined under this Code of Practice. The Chairperson presiding at a meeting of the **Code Management Committee (CMC)** has a deliberative vote and, in the event of an equality of votes, has a second and casting vote.
117. The AIPD is aware of its obligations to have evidence of a proper consultation process with members and industry stakeholders in order for this Code of Practice to hold credibility and to meet submission requirements to government for statutory approval to the relevant OH&S Authorities in each State/Territory and the Commonwealth jurisdictions. We confirm written approaches for the formulation of the Code included the NOHSC and all OH&S responsible bodies in Australia; all WorkCover Authorities; the Insurance Council of Australia Board members; the major insurance companies in Australia either directly or as members of the ICA which has a duty to advise its members; all Department of Industrial Relations Ministers in Australia; the NSW Police Security Registry/CAPI; Queensland Department of Fair Trading Racing, Wine & Tourism; Centrelink; Telstra; major Banks; Nominal Defendants Offices in all States/Territories; The Self-Insurance Association of Australia and its members; Motor Accidents Authorities and CTP Regulatory bodies in each State/Territory; ACCC and other industry stakeholders.
118. The AIPD confirms that it has been diligent and proactive in the inviting of submissions for this Review of the original Code of Practice document and encouraged industry members and stakeholders nationally to participate in the Review process. We also confirm that the AIPD complied strictly with its stated intention to consult all its

members by e-mail and post regarding the Code Review and also invited comments and further submissions by proxy from the AIPD website in relation to the Code Review. Further, the AIPD fulfilled its consultation obligations by adhering to the consultation specific consultation periods being:- **(STAGE 1) Submissions accepted 1-5-2008 to 1-6-2008** and **(STAGE 2) Submissions accepted 16-6-2008 to 16-7-2008**.

Standards Development

119. The AIPD seeks to work with others whose intention is ongoing improvement of standards and the operational structure of the investigations industry and mercantile activities in Australia in the best interest of all industry professionals, their clients, government statutory overseeing bodies and members of the public. All stakeholders deserve a high standard of professional application as well as a reasonable transparency relating to such important activities that inevitably affect people, business and government.
120. The AIPD is also committed to appropriate consultation with government and related qualified agencies for appropriate integration of the investigations and mercantile industries into the national homeland security framework. This is dependant on the Government agreeing to work with the AIPD and its industry members.
121. It is our intention to:-
- Identify appropriate partners and stakeholders able to contribute to a national effort
 - Establish agreements on responsibilities and roles
 - Pursue explicit, mutually-accountable agreements that provide a reliable basis for ongoing accessibility over long periods
 - Help identify, develop and promote policies, procedures and tools to support CPD and improvement of the industry operational framework, such as appropriate access to information for matters before the Courts, Tribunals and various Commissions Refer to the AIPD web site www.aipd.com.au for submissions to the Privacy Commissioner and the CAPI unit.
 - Work with industry representative associations to maintain ongoing improvement and best practice procedures for the industry as well as streamlining of inefficient processes
 - Unify the industry through a high standards policy and offer industry professionals access to an ongoing CPD training framework in order for them to offer a broader range of specialist services to clients. This is in keeping with OH&S legislation.
 - Encourage consultation and establishment of practices that will enable, rather than hinder functional and expeditious operational behaviour.
 - Embrace technological improvements to maintain improvement in industry applications and processes
 - Work with the Federal Attorney General to develop legislative and funding frameworks that will enable cost-effective preservation and improvement in the industry, remove trading and fair

operational barriers of these vital activities in the interest of government itself, business and members of the public who all utilise the services of our industry professionals

- Work with the Federal Attorney General to develop for appropriate integration of the investigations and mercantile industries into the national homeland security framework
- Work so that all persons in Australia are equal before the law

Conduct of AIPD Directors, Committee Members and Staff

122. The AIPD will pursue the Code aims and purpose by: -

- I. Making decisions that are consistent with the role, purpose and interests of industry professionals as well as their clients and the public;
- II. To adequately consult with industry members and other industry stakeholders in relation to such decisions;
- III. Complying with any legislative, industrial and administrative requirements and keeping up to date with any legislative changes;
- IV. Providing all necessary and appropriate assistance to AIPD members, and industry members including access to education and training programs and basic legal advice through its legally qualified consultant/s;
- V. Promoting a culture of continuous professional development for directors, committee members and staff and AIPD members and the industry;
- VI. Maintaining adequate documentation to support any decisions made;
- VII. Treating each AIPD member, their staff, other industry representative bodies (IRB's) and their members and staff and industry stakeholders with courtesy and sensitivity;
- VIII. Achieving operating efficiencies and benchmarks and continue to set improved guidelines via appropriate consultation with members, industry representative bodies and stakeholders;
- IX. Obtaining value for industry professionals using '*best practice*' principles for money spent or invested and avoiding waste and extravagance in the use of AIPD resources;
- X. Ensuring a safe, healthy and discrimination free environment;

- XI. AIPD directors, board members or committee members acting with propriety at all times in the interest of members and the industry and not taking or seeking to take improper advantage of any AIPD information gained in the course of their appointment or employment associated with the AIPD;
- XII. Directors and Board members and staff acting honourably and with transparency in their actions and activities;

Responsibilities and Remuneration of Executives & Committee Members

123. The AIPD President, CEO, Executives and Committee Members will have a contract that details their roles and responsibilities and the form of their remuneration and expenses. Any such contract will not be valid unless the Board of Directors of the AIPD has approved it.

Conduct of Certified Practising Investigators (CPI's) & Certified Practising Mercantile Agents (CPMA's)

- 124. It is mandatory that persons holding an industry Practising Certificate and working as CPI's and CPMA's comply with the Industry Code of Practice and their Industry Representative Body Code of Conduct as well as all Australian laws to be in a position to extend '*best practice*' and a professional level of service to clients and to be able to be recommended by the Industry Representative Bodies to any potential client /services inquirer or employer.
- 125. CPIs and CPMAs agree to be bound by this Code of Practice, the associated Code of Ethics www.aipd.com.au Code of Ethics and that of the Industry Representative Bodies with whom they hold membership.
- 126. CPIs and CPMAs are required to categorically refuse any approach by others or to offer themselves, any form of financial inducement for the obtainment or favour of business or solicit business by the offer of a secret commission/s in order to receive work assignments or confidential information or preference in any EOIs (Expressions of Interest), RFTs (Request For Tender); Tender process for business or favour or any other advantage, particularly in respect of traditional corporate clients - such as insurance companies; governments departments and agencies; financial institutions; associations, lawyers, self-insured organisations, etc. Further, to avoid any activity or action that can be suggestive of an interpretation of misconduct and potential corrupt activity.

127. Members are permitted to offer infrequent hospitality to clients however such hospitality must not bring the profession of Certified Practising Investigators and Certified Practising Mercantile Agents into disrepute. This allowance is described along the principles of being consistent to normal business practices in Australia, such as formal occasional luncheons, business promotional gifts; or attendance at client functions at the invitation of a client and attendance at formal functions or formal corporate meetings for the purpose of business interaction. Such examples being:- business golf days; sponsorship events; the formal meeting of new client personnel that may be involved in the business relationship process between the parties; provision of incidental marketing materials to clients for the formal promotion of a CPIs / CPMA's services in any State or Territory. Such activities however must not breach a client's business policies relating to professional service providers.
128. Any breach of the of this Code of Practice, associated Code of Ethics or breach of IRB Codes of Conduct or Statutory Codes of conduct relating to the various licensing regimes, will be subject to the DRS and if necessary, the enforcement provisions of this Code. If required the breach may also be referred to the appropriate Government Statutory Authority/ies for investigation, assessment and action.

Enforcement Provisions

129. Under this Code of Practice commercial CPIs and CPMA's may be subject to random inspections or audits during normal business hours between 9am-5pm, Monday to Friday by a member of the AIPD CMC and/or a suitably qualified investigator/s as appointed by the AIPD board. Such audits/inspections or specific investigations however may only be commenced resultant from the AIPD's receipt of a written formal complaint from a party or information discovered as part of the Dispute Resolution Process, or information exposed in the public domain that suggests impropriety by any industry professional or a person who, based on suitable evidence, has been deemed to have breached this Code of Practice.
130. Should an audit or random inspection reveal breaches of the Code or lead to inappropriate findings and conclusions, then the CPI/CPMA may be subjected to financial penalties and/or issued with an 'Improvement Advice and/ or 'Improvement Schedule' by the AIPD Executive in which the required actions deemed necessary to satisfy a suitable remedy and the required timeframes relating to same, will be stipulated. Should these requirements not be met, the CPI/CPMA may attract a Practice Suspension Notice (PSN) or Practice Cancellation Notice (PCN), revoking his/her practising certificate. Serious breaches, illegal or criminal activity findings will be referred to the State's relevant Government Statutory Authorities or State's Police Services for investigation.

131. Failure of a Member to co-operate with an AIPD formal Audit or Investigation request may attract cancellation of the Practising Certificate/s and AIPD Membership of all directors of the Investigation Firm involved, including membership and an Industry Representative Association. Findings may also be referred to the State Certification/Licensing Body for Investigation.
132. The AIPD reserves the right to conduct an independent investigation of any CPI or CPMA, Industry Representative Body deemed (by the tabling of suitable evidence) to be in breach of this industry Code of Practice; or any party undertaking investigations and or mercantile activities which is deemed to be required under this Code to hold an industry Practising Certificate, yet fails to do so; or a firm using a CPI or CPMA as a Nominated Responsible Person. If found in breach of the Code, then remedy will be sought by the AIPD under the Enforcement Provisions of this Code as well as pursuit of legal remedy through State and Federal Courts, in addition to referral for investigation of the perpetrator/s by relevant State and/or Federal Statutory bodies.
133. Where breaches of the Code are fully investigated and confirmed by evidence, or the perpetrator/s convicted by a Court or breached by Government Statutory Authority in relation to their activities; and a CPI or CPMA's Practising Certificate cancelled, such information will be published on the AIPD website at www.aipd.com.au under the '**Disqualified Practitioners List**' and or in the case of a non qualified person, firm or organisation, under the '**Breach of Code of Practice List**'.
134. Where a CPI or CPMA is convicted of a criminal offence that is described as a '**disqualifying offence**' under this Code and/or by a licensing authority, thus breaching satisfactory probity standards, cancellation of the industry member's practising Certificate is applied. Such cancellation will be published on the AIPD website at www/aipd.com.au under the '**Disqualified Practitioners List**'.
135. Where a company or business holding directorship or ownership by non CPI qualified persons, but conducting investigation and mercantile activities under the nomination of a responsible person provision (who holds a CPI or CPMA certificate), and that firm is found to have breached the Code of Practice, by AIPD investigations or by actions of other authorities, the AIPD retains the right to lodge the firm on the '**Disqualified Business List**' published on the AIPD website at www/aipd.com.au.

Breaches by Directors of Corporations or Business Entities

136. Where non-certified directors of a firm or business or entity have failed in their duty to employ a CPI or CPMA or constantly employ a CPI or CPMA as a nominated responsible person in the business in respect of services offered for investigation and/or mercantile activities, then they are in breach of this Code of Practice. In this situation, remedy will be sought against the directors, principles by the AIPD under the Enforcement Provisions of

this Code as well as pursuit of legal remedy through State and Federal Courts, in addition to referral for investigation of the perpetrator/s by relevant State and/or Federal Statutory bodies.

137. If a corporation contravenes, whether by act or omission, any provision of this Code or law or regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. Remedy will be sought against the directors, principles by the AIPD under the Enforcement Provisions of this Code as well as pursuit of legal remedy through State and Federal Courts, in addition to referral for investigation of the perpetrator/s by relevant State and/or Federal Statutory bodies.

Professional Misconduct Provisions

138. A CPI or CPMA shall be guilty of professional misconduct under the following circumstances, (but not restricted to):-

- I. Breaching this Code of Practice;
- II. Is found guilty of a disqualifiable offence under the Code or under commercial Investigation / Mercantile Agent licensing legislation;
- III. Is convicted of an indictable offence under any Act;
 - ❖ Practice without a current Practising Certificate;
 - ❖ Practice whilst having a Practising Certificate suspended or cancelled;
 - ❖ Practising outside a limitation provision imposed upon the practitioner under the Enforcement / Penalty Provisions of this Code;
 - ❖ Act without propriety;
 - ❖ Fails to meet ASIC / ACCC Debt Collection Guidelines;
 - ❖ Fails to meet government licensing requirements;
 - ❖ Fail to comply with Penalty Directions under the Enforcement Provision of this Code;
- IV. Engages in any activity that brings the industry into disrepute (including but not restricted to:- paying secret commissions; common law bribery; obtaining

- information by illegal means; cartel conduct; collusion with others to unfairly control sources of business, work flows and assignment referrals;
- v. Engages in unconscionable conduct. (E.g. Applying the threat of financial hardship or similar imposition such as exclusion from receipt of further business; or continuing work flow levels reduced; or other improper penalties or termination of assignment referrals to a sub-contract CPI/CPMA, should the sub-contractor CPI/CPMA not wish to comply with a client (Head Contractor) directive or a request of the CPI/CPMA firm to perform an activity or duty that is illegal or falls outside their formal services contract; or causing any loss or punishment to a sub-contracted CPI/CPMA for reporting an OH&S concern or matter; or for not completing a field instruction which placed or may have placed or exposed the CPI/CPMA to unnecessary risk or danger. In accordance with OH&S legislation and this Code of Practice, the Field Investigator CPI/CPMA cannot be reprimanded, or victimised, punished, or his/her services terminated or workflow reduced, or suffer loss as a result of his/her or their company, making a complaint in relation to any OH&S issue. Similarly, this responsibility is incumbent upon the client (a private entity or government entity) with whom the CPI/CPMA firm holds a service agreement either in writing or oral/verbal;
 - vi. A CPI /CPMA defames another CPI/CPMA to a client or in the public domain without suitable evidence; or colludes with a client or another party to defame another CPI/CPMA; or attempts to provide misleading or unproven /unsubstantiated information to a client to cause another CPI/CPMA to be defamed surreptitiously for the purpose of 'black banning' a sub-contract CPI /CPMA from a client professional register or another client or CPI/CPMA firm's professional register;

Penalty Notice Provisions

139. Subsequent to appropriate investigation of a complaint or dispute relating to a CPI / CPMA and satisfying the DRS requirements, where a CPI/CPMA is found guilty of an offence under this Code of Practice or is guilty of Professional Misconduct, a range of penalties may be applied against the CPI/CPMA, including but not restricted to:-
 - I Issue of an Improvement Advice (I.A.);
 - II Issue of a Compliance Directive (C.D.);
 - III Direction of Financial Remedy or Financial Commitment or Compensation;
 - IV Increased Fees Notice associated with CPI / CPMA renewal;
140. All penalties must be served upon a CPI/CPMA in written form. A penalty notice may be served personally or by post at the last known business and/or personal address of the

CPI/CPMA or the registered office as per ASIC records or the relevant State Government Business Register;

141. Penalty applications and severity for breaches may be varied from time to time by the AIPD Board, subject to suitable consultation with all recognised Industry Representative Bodies;
142. Further information regarding Penalty Notices may be obtained by CPIs/CPMAs from the AIPD website at www.aipd.com.au Code of Practice and/or IRB websites under 'Penalty Notices'.
143. Application of this section of the Code does not limit the operation of any other provision of, or made, under this Code or any other law relating to proceedings that may be taken in respect of offences of a CPI/CPMA.
144. The AIPD retains the overriding authority and determination in relation to any withdrawal or suspension of a industry professional's Practising Certificate taking into consideration any of the above Penalties Notices applied against a CPI/CPMA and also in respect of the consideration of their right to hold membership with a recognised Industry Representative Body;

Extraordinary Amendment Provision

145. The '*Extraordinary Amendment Provision*' (EAP) for this Code of Practice, is a provision retained by the AIPD. The EAP is required in order to accommodate any extraordinary industry application or industry development or legal requirement that may emanate from the introduction of new legislation, principles, technology/ies or processes.
146. Any such amendment would be published on the Institute's website at www.aipd.com.au for consideration and comment of all stakeholders for a period of one calendar month. After review of submissions, the AIPD Board will ratify the amendment/s and publish same on the Institute's website as an **Annexure D** immediately subsequent to the published Code of Practice document.

Fees & Charges

147. The Institute in no way intends to specify to clients of Certified Practicing Investigators or Certified Practicing Mercantile Agents, the hourly rate of fees or other associated service charges however CPI's and CPMA's are obliged under this Code of Practice to fulfil all their legal and commercial obligations when offering their professionals services. These obligations include but are not restricted to:-

Compliance with:-

Industrial Relations law

Occupational Health & Safety laws

Commonwealth Independent Contractors Act 2006

Taxation law

Costs of Practicing:-

- formal qualifications, training schemes/seminars and Continuous Professional Development costs;
- Practising Certificate Costs;
- Industry Representative Body membership;
- costs of licensing;
- costs of required insurances – public liability, workers compensation, income protection, personal professional indemnity, business insurances, special item insurances;
- OH&S Management System meeting AS/NZS:4801 level compliance;
- other optional business credibility schemes such as., e.g. ISO9001:2000 Quality Management Systems accreditation;
- purchase of technological improvements – processes and purchase of specialised equipment;

Required Services Fee Considerations:-

- historical expertise;
- specialised expertise;
- costs of CPI's and CPMA's professional time;
- travelling time;

- kilometre travel costs and operating a motor vehicle for specific business usage;
- accommodation, meal and living away allowance fees;
- Information database records searching and legal searches;
- court fees;
- all sundry expenses incurred as part of the work conducted for the client; report preparation time by the CPI or CPMA;
- report production and office administration charges;
- costs of required insurances - public liability, workers compensation, professional indemnity, business insurances, special item insurances;
- storage of evidence fees;

148. Certified Practicing Investigators (CPI's) and Certified Practicing Mercantile Agents (CPMA's) require a reasonable scale of remuneration in order to fulfil their legal and commercial obligations and to deliver a professional level of service. As a suitable level of remuneration, rates should be applied commensurate with the level of professional services they provide. *I.E.* Higher fee rates would normally be required to be applied by a CPI or CPMA who provides regular services under a contract with a company or government agency, as an investigation firm or mercantile firm or part of a consultancy firm's services products, with a necessity to ensure the regular supply of CPI's or CPMA's as field operators (as employees or contractors) - then the CPI or CPMA fees must consider all their legal operating obligations. The sole trader CPI or CPMA working as a sub-contractor to a CPI firm or CPMA firm who holds a services contract with a Head Contractor (client), has less onerous operational obligations and expenses and would generally attract a lesser rate of fee remuneration than the CAPI / CPMA contract firm.

149. The '*Suggested Reasonable Scale of Fees Schedule*' attached hereto at **Annexure 'C'** is a guide only to fees and is to be assessed by an independent actuary or suitably qualified person engaged by the AIPD and to form part of this industry Code of Practice. Such suggested fees are to be reviewed every two years but may be reviewed sooner if there is a reasonable need to do so due to such matters as inflation etc.

150. The '*Suggested Reasonable Scale of Fees Schedule*' is also provided as a tool to assist Certified Private Investigation firms and Certified Practicing Mercantile Agents that utilise the services of contracted Certified Field Investigators and Certified Field Mercantile Agents.

151. It is a requirement that all Certified Practicing Investigators and Certified Practicing Mercantile Agents apply 'due diligence' in relation to their trading activities and whilst they of course retain the right to remain competitive, they must comply with the relevant laws, including OH&S laws, Industrial Relations laws and particularly the Commonwealth Independent Contractors Act 2006 and Regulations, which the CPI or CPMA engaging in contracts with major clients and then utilising the services of sub-contract CPI's or CPMA's to complete the actual work assignments. The professional integrity of each CPI and CPMA and operational independence must be maintained in accordance with the control provisions of the Commonwealth Independent Contractors Act 2006.
152. The onus of relating legal compliance requirements to clients or potential clients, in justification of fees, or operating methods, rests on the individual CPI / CPMA when negotiating contracts however the AIPD can be consulted if there are any difficulties in applying proper and reasonable costs or fees that might be charged.
153. Where excessive control or unconscionable conduct is applied, attempted or believed to have been attempted by a client over a CPI or CPMA when negotiating a contract, (or exists in a current contract for services), to disadvantage (financially or otherwise) or control the professional application and decision making independence of a CPI or CPMA, the working conditions of a CPI or CPMA leading to a breach of any Australian law, (particularly OH&S law, Industrial Relations law and the Commonwealth Independent Contractors Act 2006), such behaviour must be reported by the CPA / CPMA to the industry representative body with which the industry professional holds membership as well as using the approved Form - ([Doc3OHS.1/CPI/CPMA/irb](#)) to send advice to the AIPD executive for consideration.
154. Where excessive control or unconscionable conduct is applied, attempted or believed to have been attempted by a client over a CPI or CPMA, surreptitiously, to control the professional application, engagement or professional decision making processes of the CPI/CPMA, leading to a breach of any Australian law, (particularly OH&S law, Industrial Relations law and the Commonwealth Independent Contractors Act 2006); such behaviour must be reported by the CPI / CPMA to the industry representative body with which the industry professional holds membership as well as, using the approved Form - ([Doc.3OHS.2/AIPD](#)) to send advice to the AIPD executive for consideration.
155. Where a CPI or CPMA successfully negotiates a 'contract for services' with a client and require utilisation of the services of a sub-contract CPI or CPMA to fulfil the contract, then the conditions agreed to in the contract in place between the Head Contractor (being the client) and the contracted CPI or CPMA, do not apply to the sub-contract CPI or CPMA unless all such conditions are clearly identified and agreed to in a separate contract and formalised between the contracted CPI / CPMA and the sub-contracted CPI / CPMA.

156. Where a client desires to impose a financial ceiling for the investigative services they require on any particular matter or matters, it is incumbent upon the Certified Investigation Firm and Certified Mercantile Agent Firms to provide a written quotation advice (on each instance) to that client, denoting exactly what the offered financial ceiling amount is able to buy, based on the rates the CPI / CPMA charges and receive confirmation of acceptance from the client before proceeding with the investigation.
157. As Commercial Investigators and Mercantile Agents are inherently involved in matters before the Courts and Tribunals, Commissions etc in Australia and assist lawyers in their case preparation and the gathering of evidence and are recognised as paralegals, it is suggested that the Court approved scale of fees for solicitors costs in terms of Administration Charges be adopted by Certified Practicing Investigators and Certified Mercantile Agents.
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PART C :

PORTFOLIO PRACTICES & PROCEDURES

General Guidelines - Field Operations	...64
Surveillance Specific Guidelines	...69
Mercantile Specific Guidelines	... 73
1. Procedures – Debt Collection & Assets Repossession	...73

General Guidelines - Field Operations

Factual Investigations * Surveillance * Mercantile Activities

158. The conditions of engagement between the CPI/CPMA firm and the CPI / CPMA field employee or sub-contractor are to be negotiated between the parties in written form, clearly identifying the services agreement;
159. The CPI/CPMA firm is to specifically and formally qualify the terms of engagement in respect of the engaged CPI/CPMA. Particularly, the CPI /CPMA firm must identify whether the Certified Field Investigator is working under a '*contract of service*' or a '*contract for service*';
160. If the engagement agreement is in fact a '*contract for service*' (meaning a sub-contractor), CPI / CPMA firm must comply with the requirements of the Commonwealth Independent Contractors Act 2006 and allow the engaged CPI / CPMA the freedom to contract work assignments for other work sources and for his or her own clients. Further, the sub-contracted CPI / CPMA must retain the ability to accept or refuse work assignments from the CPI/CPMA firm at their discretion, (unless formal agreement allows otherwise) without intimidation, retribution, or threat of punishment or financial duress such as termination of the services of the contractor or intimidating tactics such as to reduce the previous established / historical flow of work assignments to the CPI/CPMA due to his or her decision not to conduct a particular matter or matters; or due to the CPI/CPMA's inability to perform an assignment for any other reason. Such action by a CPI/CPMA firm related in the form of a formal complaint by the CPI/CPMA would attract investigation by the relevant IRB and the AIPD and if found guilty of a breach of this Code, remedy sought in accordance with the Enforcement Provisions of this Code or other available means;
161. Under a '*contract for service*' agreement it is mandatory that both the Certified Investigation Firm and the Certified/Licensed Investigative Operator meet all requirements under the Occupational Health & Safety legislation;
162. If the engagement agreement is in fact a '*contract of service*', the Investigation Firm is to comply with Federal and State Employment and Industrial Relations laws as well as Occupational Health & Safety legislations;
163. Where a person is classified as a Sub-Agent under a State Licensing regime, they are '*deemed employees*' of the CPI/CPMA under this Code of Practice;
164. In relation to urgent instructions being issued by a CPI/CPMA firm (or via their client), the CPI/CPMA firm is obliged to manage the matter appropriately. The CPI/CPMA firm is obliged to take into consideration the health & safety of the Field Operator CPI/CPMA, whether or not the Field Operator is engaged under a '*contract of service*' or a '*contract for*

service'. The CPI/CPMA firm is not permitted to breach Industrial Relations laws or Occupational Health and Safety laws for their own gain or to intimidate the Field Operator CPI/CPMA (contractor or employee) to perform the said work when he or she is legitimately unable to do so; or if the client's request is deemed unreasonable. It is the CPI /CPMA firm's responsibility to professionally manage the client's request and advise the client accordingly if they are unable to provide the service or services in accordance with their request;

165. Under this Code of Practice it is deemed fair and reasonable for a CPI/CPMA firm to apply whatever fees they believe are reasonable taking into consideration the work to be performed, the level of expertise and their qualifications, as well as increased fees in accepting urgent instructions. Whether or not the CPI/CPMA firm chooses to apply an increase in fees for urgent services to their client is at their discretion, however this does not affect the right of a sub-contract CPI/CPMA to apply a higher fee, being negotiable between the parties and provided there are no related conditions in their *'contract for services'* preventing same;
166. A Risk Assessment of all assignments is to be conducted by the CPI / CPMA firm via a qualified staff member of their staff, before assignment delegation to a Field Operator. The Field Operator's health and safety is to be a priority at all times and all OH&S issues adequately addressed. Controls are to be implemented where necessary by the CPI /CPMA firm in terms of the *'Hierarchy of Controls'*, Risk Management procedures in accordance with the national Risk Management Standard AS/NZS 4360:2004 and the relevant OH&S legislation and regulations. (Such controls maybe for example: - providing optional personal tracking and communication equipment in remote, isolated or potentially dangerous working locations/environments; providing suitable working conditions; ensuring suitable workloads; providing a two way radio facility or particular communications device - specific mobile telephone, satellite telephone etc., for contact and emergency contact purposes; providing office support; provision of a second Investigator where deemed a requirement to safely conduct an assignment and this to be represented to the client irrespective of any inherent reluctance to pay for two investigators;
167. The CPI/CPMA firm must advise their client/customer of their legal requirements to work under the OH&S legislation and have a Policy complying thereto and make their client aware of that Policy. To also, have sighted the client's policy if not dealing with a private individual and ensure an open consultative process exists between the parties to protect the Investigator or Mercantile Agent who is entrusted to perform the work;
168. Assignment instructions to CPIs/CPMA's can be issued by any person, qualified or unqualified. Where however, the instructing person is not a suitably qualified CPI or CPMA (as the case may require), they are not permitted under this Code of Practice to dictate actual investigative or mercantile procedures and practice. The person may request the CPI/CPMA to provide such information and make recommendations based on their professional opinion as to 'best practice' methods and/or applications that should be adopted in a specific matter or matters;

169. The Field Operator CPI/CPMA must also be aware of the CPI/CPMA firm's OH&S Policy & Procedures and an open consultative process is available for the reporting of OH&S and industrial relations concerns as well as to address general business issues;
170. In accordance with OH&S legalisation and this Code of Practice, the Field Investigator CPI/CPMA cannot be reprimanded, or victimised, punished, or his/her services terminated or workflow reduced, or suffer loss as a result of his/her or their company, making a complaint in relation to any OH&S issue. Similarly, this responsibility is incumbent upon the client (a private entity or government entity) with whom the CPI/CPMA firm holds a service agreement;
171. In accordance with OH&S legalisation, the Field Operator CPI/CPMA is required to, and has an inherent responsibility, to take appropriate care of his/her own safety and well being;
172. All instructions should be issued in written evidentiary form, even if initial instructions are provided by telephone or verbally. Confirmation by e-mail, fax or letter is 'best practice';
173. A CPI/CPMA firm is to inform and make the Field Operator CPI/CPMA aware in writing, of the firm's guidelines and/ or special requirements/ guidelines and policies of their client. It is however not incumbent upon a sub-contract CPI/CPMA to adhere to the CPI/CPMA's client request unless formal agreement to do so is in place under a 'contract for services' between the CPI/CPMA firm and the sub-contracted CPI/CPMA;
174. The CPI/CPMA firm is to ensure that there is a suitable and fair process available for formal consultation between all the parties to clarify instructions, if required and / or to obtain further information or clarification of any aspect or concerns.;
175. The field sub-contracted CPI/CPMA is to act professionally at all times and dress suitably and commensurate with the requirements of the profession and the environment where they are to work; and in accordance with industry Codes of Conduct and other laws such as OH&S laws to comply with any safety direction., policy, regulation when visiting a third party premises - e.g. a building site;
176. Factual Statements and Records of Interview and Affidavits are to be taken in accordance with legal requirements, however in a mutually agreed format, required by the CPI/CPMA firm or their client;
177. The use of a recording device for interviews is permitted in accordance with the State, Territory and Commonwealth jurisdictions, relevant to the investigation and or mercantile activity;
178. CPI/CPMA firm should have Standard Operating Procedures (SOPs) in place for their field CPI/CPMAs and inducted accordingly, whether employees or sub-contractors;
179. The CPI/CPMA firm and the field CPI/CPMA have obligations to maintain the security of confidential information in accordance with State and Commonwealth legislation as well as their client's individual Privacy Policy and 'contract for service' agreement. Field

CPI/CPMAs are required to apply '*due diligence*' in relation to the security of an employer or client's files, items of evidence and confidential information that is in their possession both when in motor vehicles, at third party locations and at their offices or places of residence;

180. The sub-contract CPI/CPMA's report information (including copies of evidence obtained and originals of video evidence, contemporaneous notes, audio tapes, still photographs and digital images) should be retained by the sub-contract CPI/CPMA and all other file information returned to the Certified Investigation Firm. Sub-contract CPI/CPMA's and CPI/CPMA firms are to store records and retain information in accordance with relevant laws and the policy/agreements with their respective clients. If the investigation firm, client or their legal representative insists on a policy to take possession of original evidentiary materials, then it is a requirement that a quality system for the transfer of the evidence be in place and maintained to ensure transparency and the continuity and integrity of the evidence.
181. Investigation Firms are required to remunerate Certified Field Investigators working under a '*contract for service*' or contract arrangements, within a reasonable time frame. A suggested period of fourteen (14) days of the date of issue of their Tax Invoice may be deemed reasonable. Any dispute in relation thereto is to be handled via their contractual agreement or the CPI/CPMA firm evidentiary complaint handling process and/or the Code of Practice Dispute Resolution Scheme, if required. Should the fees not be paid by the time specified in the services agreement or appropriately authorised variation thereof by the parties, then the sub-contract CPI/CPMA's is entitled to charge an additional fee of interest for each day the fees are outstanding. This is in accordance with normal business practice in major companies and governments in Australia.
182. The field Investigator CPI or is obliged to make all the appropriate efforts and representations on behalf of the head contractor (client) and in order to obtain information that may assist in the construction of a legal defence to a matter subject to or before the Courts, Tribunals and Commissions.
183. **Evidence & Business Records** - The evidence obtained by CPIs /CPMAs should satisfy the evidence continuity and integrity process. It is therefore essential that the Field CPI/CPMA who obtains stills **35mm photographs** during an investigation should retain all the negatives and label these accordingly and retain them on their file. Hard copy files should be kept in lockable fireproof cabinets. **Digital photographs** and **media** should be downloaded to a dedicated storage location for each assignment such as on a CD, USB, disk drive, DVD or similar unit and appropriately marked and stored. The CPI/CPMA should have a properly drafted organisation data retention policy covering all forms of business records as well as evidentiary materials. With increasingly more business-specific information being proliferated in digital form such as e-mail and instant messaging records, the importance of implementing a storage solution reflective of a robust data retention policy is also a valuable consideration. A CPI/CPMA should ensure that they not only have a disaster recovery system for there IT as well as a dual level

back-up system for digital files and these stored physically in separate locations which can be important for recovery from a main system failure, natural disasters or unexpected virus or unexplained system data loss. Organisations also need an efficient and responsive system that can be indexed for rapid search and data retrieval. The software should not allow the deletion or overwriting of data by company employees. It is acceptable for the originals of Statements, Records of Interviews, typed transcripts of Records of Interviews from audio tapes, obtained by the sub-contract CPI/CPMA to be forwarded to the sub-contract CPI/CPMA's firm, client or their acting solicitors; however copies should be retained for future evidential reference and comparison. The original **audio tapes** used to record a Record of Interview should be retained by the sub-contract CPI/CPMA and appropriately and securely stored. The original of ALL video tapes obtained during the course of an investigation or mercantile activity should be retained in the possession of the sub-contract CPI/CPMA's and only a copy forwarded to the Certified Investigation Firm, solicitor and/or client. This is required to maintain the continuity and integrity of this evidence. Originals of contemporaneous field notes or progress notes of an investigation or contemporaneous audio notes should be retained on the sub-contract CPI/CPMA's file and if required, copies of this material only forwarded to the CPI/CPMA firm, their client or client solicitors. Copies of other evidential documents obtained should be kept on the sub-contract CPI/CPMA's file and appropriately securely stored. All storage of files and evidentiary materials should be in fireproof, key lockable cabinets. The facility in which they are stored should meet reasonable security standards, such as a back to base Alarm System, window locks and deadlocks. A formal signable log or access coded evidentiary authorising system of the movement of any original evidence should be maintained. **Environmental factors** - Materials should be stored in clean, dry secure areas, with temperature and humidity ranges appropriate to the type of material stored. Evidence should be retained safely and/or in accordance with specific client's policy requirements and legal retention timeframes. CPI/CPMA general business records must also be retained in accordance with the relevant legislations and retention timeframes.

184. **Indemnity / Release / Formal Undertaking Agreement** - It is deemed 'best practice' where the sub-contract CPI / CPMA is required to obtain a signed Indemnity or Release from a person as part of their instructions/enquiries, that the sub-contract CPI/CPMA's retain a copy of that document/s and forward the original by registered Post, courier or personal delivery to the CPI/CPMA firm or the Head Contractor's premises.
185. All CPMA's are obliged under this Code of Practice to ensure their current business address and contact details are made available to their IRB and the AIPD upon issue of a Practising Certificate. Any change of address or contact details are required to be supplied to the IRB and the AIPD within 14 days.

Surveillance Specific Guidelines

186. A Risk Assessment of all Investigation matters is to be conducted by the CPI/CPMA qualified member of staff before assignment delegation to a Field CPI/CPMA. The field CPI/CPMA's health & safety is to be a priority at all times and all OH&S issues adequately addressed. Controls are to be implemented where necessary by the Certified Investigation Firm in terms of the 'Hierarchy of Controls', Risk Management procedures in accordance with the risk management Standard AS/4360:2004 and the relevant OH&S Legalisation and Regulations. (Such controls maybe for example: - providing personal tracking and communication equipment in remote, isolated or potentially dangerous working locations/environments; providing suitable working conditions; ensuring suitable work loads; providing a two way radio facility for contact or particular communications device, specific mobile telephone, satellite telephone etc., for contact and emergency contact purposes; providing office support; provision of a second Investigator where deemed a requirement to safely conduct an assignment and this to be represented to the client irrespective of their inherent reluctance to pay for two investigators; provision of appropriate cooling / heating devices for static surveillance vehicles; appropriate in-vehicle device for hands free video operation when mobile, etc);
187. Heat and cold environmental management should be adequately addressed and managed in accordance with Occupational Health & Safety legislation and 'due diligence' applications employed to appropriately manage these serious working environment risks for surveillance operators.
188. It is recommended under this Code of Practice that Surveillance Field Investigators themselves, as well as the CPI/CPMA firm, address and appropriately manage the risks associated with prolonged static physical immobility which hazards include but not restricted to: - DVT (deep vein thrombosis); muscle strain; cramps; back and neck strain; physical fatigue; mental fatigue; dehydration, etc., which are real and inherent factors when conducting surveillance investigations. It is a requirement that Field Investigators and Investigation Firms include in their OH&S Procedures, for Surveillance Investigators to be educated in relation to these specific occupational health and safety dangers and that appropriate exercises and management guidelines implemented to manage these risks.
189. It is recommended as a guide only (but this should be addressed appropriately with your medical advisors) that static/confined surveillance not exceed 5 hourly segments without a 30-minute break. Extremes of environment such as very high temperature conditions and other variables would of course require appropriate risk management applications. Policies should be set based on recommendations from the individual CPI/CPMA firm medical and specialist OH&S advisers, taking into consideration the surveillance environment and conditions in each case.
190. During the rest break period, it suggested that the Investigator should perform appropriate stretching and mobility exercises to assist blood flow in accordance with the CPI/CPMA's company OH&S Management System provisions and the firm's own medical adviser's guidelines and as agreed upon through the consultation process between the parties.

191. In extraordinary circumstances when a Surveillance Field Investigator is unable to obtain relief from surveillance confinement due to the risk of his/her cover being compromised, the OH&S Policy guidelines between the CPI/CPMA firm and the Field CPI/CPMA should be followed, and based on reasonable '*best practice*' management applications.
192. A mandatory Risk Management program and procedures policy/ guidelines should be implemented for basic human needs of surveillance investigators such as water supply reserves and toileting (and appropriate disposal methods).
193. Further, that standard operating procedures (SOPs) be prepared by CPI/CPMA firms to manage long term exposure to heat and cold conditions, taking into consideration the variable climatic conditions experienced in Australia. Such guidelines to be part of the OH&S Management System and guided by information sourced from qualified entities and personnel. (e.g. Acceptable timeframes for a person conducting surveillance in a vehicle or confined space based on the ambient temperature range and exposure etc.,).
194. The CPI/CPMA firms or sub-contract CPI/CPMA's are entitled to charge a reasonable fee for the storage of file information and the safe storage of evidential material and digitally backed-up digital records. As well as a fee for the copying of any case video evidence in any report.
195. Should a CPI/CPMA firm or sub-contract CPI/CPMA cease to operate business activities, then the responsible CPI/CPMA and the directors of the firm, have an obligation to keep safe all files and the evidentiary materials. If they are unable to suitably store the files and materials, they are required under this Code of Practice to return all materials to the respective Head Contractor/clients. If this cannot be arranged the CPI/CPMA is required to advise their relevant Industry Representative Body or the AIPD. who will take possession of the files and materials (subject to authorisation being obtained by the CPI/CPMA from their clients) for safe storage and protection for the benefit of the clients. This requirement should be a provision in all service contracts between all CPI/CPMA firms and their clients as well as in the services contract with the sub-contract CPI/CPMA. The AIPD and or relevant IRB, retains the right to apply a fee to the various clients of the subject CPI/CPMA for the storage, care and maintenance of any CPI/CPMA records.
196. Should a Certified Member Investigation Firm cease to operate then it is incumbent upon them to formally advise the AIPD. no later than 4 weeks before vacation of the operating premises or cessation of trading. To avoid any future common law claims against them, the AIPD is available to accept all records, files, evidential materials etc., on their behalf and these items are to be surrendered into the care of the AIPD. The Certified Investigator's obligation to the individual client of each matter to produce evidence and provide witness evidence remains. The details of any sub-contracted or employed CPI/CPMAs are to be provided to the AIPD. for record. The AIPD reserves the right to apply fees to the CPI/CPMA or their clients for the storage and safe keeping of the evidence and information. It is the legal obligation of the CPI/CPMA to advise their respective clients of their intended cessation of business and obtain the instructions of

those clients in respect of the storage of the said materials. The Certified Member may advise the client of the AIPD storage and protection service and the CPI/CPMA is obliged to advise the AIPD in writing of the individual client's requirements.

197. **Court Obligations.** It is a requirement under this Code of Practice that all CPI/CPMAs fulfil their contractual and ethical obligations. '*Best Practice*' principles should be applied in all contractual provisions between the parties and an undertaking provision in the service contracts to ensure the obligation of the CPI/CPMA firm and also their sub-contracted CPI/CPMAs to attend Court to present evidence they obtained in any matters to which they are a witness.
198. CPI/CPMA acknowledges that they have an obligation to their clients to produce evidence which is obtained by them during an investigation or mercantile activity for which the client paid remuneration. This includes the sub-contract CPI/CPMA that carried out the investigation/mercantile work.
199. It is incumbent upon the Client that they also pay suitable industry rates for the time and expertise of the relevant CPI/CPMA if and when they are required to present the said evidence in the capacity as a witness in any proceedings. This commitment should be agreed upon and documented in any service contract between the parties.
200. If the CPI/CPMA who actually conducted the work and obtained the said evidence, ceases to operate or ceases to conduct sub-contract work for the contracted CPI/CPMA firm that was engaged by the Client, then the obligation to make all reasonable attempts to appear in Court is not diminished. It is deemed '*best practice*' for the CPI/CPMA firm to make all efforts to locate the said CPI/CPMA on behalf of the Client and provide all assistance to the CPI/CPMA and visa versa in order for the two parties to fulfil their obligations to attend Court for the Client.
201. It is deemed '*best practice*' that if the CPI/CPMA who obtained the evidence is required to attend Court or any Hearing or proceeding, however is employed elsewhere as a CPI/CPMA or another unrelated industry; or in a self-employment activity, then it is deemed fair and reasonable for this person to charge the Client or the CPI/CPMA firm for such attendance, at his/her current professional fee or hourly rate, irrespective of any contract that may be in place between the contract CPI/CPMA firm and the Client. The attending CPI/CPMA (person) should advise the required charge/fee rate in advance to the Client or the contract CPI/CPMA firm. It is within the contract CPI/CPMA firm's right (or the Client as the case maybe,) to request some form or formal documentation to substantiate the alleged current professional/pay rates of the CPI/CPMA (person).
202. The contract CPI/CPMA firm should provide complete transparency of this process so the Client and their lawyers may make a decision as to whether or not the attendance of the CPI/CPMA (person) is required. It is of course also fair and reasonable for the Client to request some form or formal documentation from the contract CPI/CPMA firm to substantiate the rates applied.

203. It is incumbent upon the contract CPI/CPMA firm to make any individual fee arrangement with their Certified Field Investigators in respect of any future Court attendance that may be required, at the time of the original sub-contract services engagement. This allows the contract CPI/CPMA firm the sub-contract CPI/CPMA to mutually agree to Court attendance fees before any possible future separation in the working relationship occurs.
204. It is deemed fair and reasonable for the CPI/CPMA attending a Court Hearing to charge on an hourly basis; or a full day or half day rate (being 8 hours or 4 hours), as well as all expenses such as travelling time; kilometre rates; parking costs; reasonable accommodation expenses, including meal allowances or living away expenses.
205. Whilst contract CPI/CPMA firms are free to agree and negotiate fees with their respective Clients, it is deemed fair and reasonable industry *'best practice'* for the contract CPI/CPMA firm to charge the client on an hourly basis for any Court attendances of their current sub-contract CPI/CPMA's; or a full day or half day rate, as well as all expenses such as travelling time; kilometre rates; parking costs; reasonable accommodation expenses, including meal allowances or living away expenses.
206. Court 'Stand-By' is not a functional practice for any of the parties and should be avoided and discouraged. CPI/CPMA's should offer Court attendance services on positive attendance instructions only.
207. It is necessary for the field investigator CPI/CPMA to provide all original documentation, original video surveillance evidence, original audio evidence etc., in any matter. The CPI/CPMA firm is also required to provide the field investigator CPI/CPMA with a copy of the formal report they submitted to the Client in order for the field investigator to ensure the report was accurate against his or her contemporaneous notes or report/records. If the original contemporaneous notes were forwarded to the CPI/CPMA firm and held by them, then it is incumbent upon the CPI/CPMA firm to provide these to the field investigator CPI/CPMA in reasonable timeframe before any Court Hearing or proceedings date.
208. When attending Court to give evidence, the field investigator CPI/CPMA should produce his/her contemporaneous notes record of the investigation events and/or the report they submitted to the CPI/CPMA firm and not rely on any typed report/s of the CPI/CPMA firm, unless it can be shown by the field investigator CPI/CPMA conducted the work and transcribed that information forming that company report which was submitted directly to the client.
209. The field investigator CPI/CPMA remains the copyright author of the investigation / evidence and for the purpose of integrity, should retain the original videotape in their possession. If this is not possible due to an enforced policy of the CPI/CPMA firm or their Client, then there must be a clear and credible evidentiary process maintained to ensure the integrity continuity of the evidence, and its path and after leaving the

possession of the author. Transfer of possession evidence should be discouraged and certainly minimised.

210. If contemporaneous field notes or video are retained by the Court or Authorised Body after production, then a receipt of transfer of the evidence should be obtained by the field investigator CPI/CPMA for his/her records and retained on file. A copy of this document should be submitted to the CPI/CPMA firm and their Client as an evidentiary record of the evidence and its carer.

Mercantile Specific Guidelines

211. In addition to *Sections 158 to 185 herein.*, CPMA's must comply with the requirements of any Commercial Agent/Mercantile Agent Licensing regimes in Australia;
212. All CPMA's are required to maintain accurate records associated with a customer account and any debt status relating thereto;
213. All CPMA's should not refer any customer or debtor to a Credit Reporting Agency or Credit Default organisation until legally permitted to do so. All CPMA's have strict obligation to ensure accuracy of all such referable information;
214. All commercial CPMA's are required to maintain a formal Trust Account, suitable records for the receivership of monies in relation to debt collection activities;
215. All commercial CPMA's are required to maintain all relevant client instructions and associated documents relating to the repossession and debt collection activities;
216. All commercial CPMA's are required to maintain all relevant client instructions and associated documents relating to the issue of Court process;
217. All CPMA's conducting telephone debt collection activities are required to maintain accurate evidentiary records of all interaction with an alleged debtor, preferably via updatable IT/computer file records. Such computer account and debtor file records should have a authorisation access /restriction system in place to ensure the security of the data, with a data operator tracing capability for all persons that access that file;
218. All CPMA's are not permitted to employ misleading, intimidating, threatening or harassing tactics when contacting an alleged debtor, be it by telephone or written correspondence;
219. All CPMA's are required to adhere to the **ASIC/ACCC Debt Collection Guidelines 2005** in respect of the Collection of Debts and Asset Repossession as follows:-

Procedures - Debt Collection & Assets Repossession

220. This Code of Practice embraces and incorporates in it, the **ASIC/ACCC Debt Collection Guidelines 2005** attached hereto at 'ANNEXURE A' - Also refer to ASIC Regulatory Guide RG96,

see:- [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ACCC-ASIC_Debt_Collection_Guideline.pdf/\\$file/ACCC-ASIC_Debt_Collection_Guideline.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ACCC-ASIC_Debt_Collection_Guideline.pdf/$file/ACCC-ASIC_Debt_Collection_Guideline.pdf)

ANNEXURE A

CODE OF PRACTICE

ACCC-ASIC Debt Collection Guidelines 2005

REGULATORY GUIDE 96

Debt collection guideline: for collectors and creditors

Important notice

This guideline is designed to give you basic information; it does not cover the whole of the Trade Practices Act or the Australian Securities and Investments Commission Act and is not a substitute for professional advice. Moreover, because it avoids legal language wherever possible there may be generalisations about the application of the aforementioned Acts. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining how these Acts apply to that conduct.



Australian
Competition &
Consumer
Commission



ASIC
Australian Securities &
Investments Commission

Debt collection guideline: for collectors and creditors

OCTOBER 2005

Debt collection guideline:
for collectors and creditors

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Contents

Part 1: Using this guideline	1
Who is this guideline for?	1
What this guideline covers	2
Why has this guideline been developed?	3
What does this guideline do?	3
This guideline focuses on individual debtors	4
This guideline applies to creditors as well as collectors	4
Debtors' responsibilities	5
Relationship with court debt recovery processes	6
A flexible, fair and realistic approach to collection	7
Roles of ASIC and the ACCC	7
Part 2: Practical guidance	8
1. Contact for a reasonable purpose only	8
2. Making contact with the debtor	9
3. Hours of contact	10
4. Frequency of contact	11
Face-to-face contacts	12
Third parties	13
Undue harassment	13
5. Location of contact	14
6. Face-to-face contact	14
Visiting the debtor's home	15
Visiting the debtor's workplace	16

7.	Privacy obligations to the debtor and third parties	17
	Collecting and disclosing the debtor's personal information	17
	What you should do with the debtor's personal information	18
	Rights of third parties	18
	Obligations regarding consumer credit reports	19
8.	When a debtor is represented	19
9.	Record keeping	20
	Recording debt settlements	21
10.	Providing information and documents	21
	Responsibility for providing information and documents	22
11.	Consistent and appropriate correspondence	23
12.	If liability is disputed	24
	Formal denial of liability	24
13.	Repayment negotiations	25
14.	Contact when a payment arrangement is in place	27
15.	Contact following bankruptcy or a Bankruptcy Act agreement	27
16.	Conduct towards the debtor	29
17.	Debtors at a special disadvantage	30
	Non-English speaking debtors	31
18.	Conduct towards family members and other third parties	31
	Communication with the debtor's child	32
19.	Representations about the consequences of non-payment	33
	Credit reporting	35
20.	Representations about the legal status of a debt—including statute-barred debt	35
21.	Legal action and procedures	36
22.	Resolving debtor complaints and disputes	38
23.	The role of independent external dispute resolution schemes	39

Part 3: Commonwealth consumer protection laws **41**

Prohibition of the use of physical force, undue harassment and coercion	41
Physical force	42
Undue harassment	42
Coercion	43
Prohibition of misleading and deceptive conduct	43
Prohibition of unconscionable conduct	45
Enforcement and remedies for breaching the Trade Practices Act or the ASIC Act	48
Fines	48
Civil orders	48
Damages or injunction	48

Appendix A: ACCC and ASIC—debt collection roles and contact details	49
Australian Competition and Consumer Commission (ACCC)	49
Australian Securities and Investments Commission (ASIC)	50
Overlapping areas	51
Appendix B: Other statutory and common law obligations and remedies	52
State and territory fair trading laws	52
State and territory licensing of collectors	53
The Uniform Consumer Credit Code [UCCC]	53
State and territory unauthorised documents laws	53
State and territory limitation of actions laws	54
Bankruptcy laws	54
Privacy laws	54
Tort law	55
Criminal law	55
Other obligations	55
Appendix C: Glossary	56

Part 1: Using this guideline

This guideline has been produced by the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). The ACCC and ASIC enforce the Commonwealth consumer protection laws. For more information about the responsibilities of each agency, see appendix A.

In this guideline the terms ‘debt’ and ‘debtor’ are used to include alleged debts and alleged debtors respectively (see the glossary in appendix C for more on terms and phrases).

Who is this guideline for?

This guideline will help:

- **collectors** (including collection agencies, debt buy-out services, in-house collection departments of businesses and government bodies, solicitors and others)
- **creditors** who use external collection agencies to collect debts or sell or assign debts to third parties

to understand how the Commonwealth consumer protection laws apply to them.

The guideline will also serve as a point of reference for **financial counsellors** and **debtors’ advisers** when negotiating with collectors about their practices. The ACCC and ASIC have developed a joint publication specifically for consumers called *Dealing with debt: your rights and responsibilities*.¹

¹ This publication is available on the ACCC and ASIC websites. A hard copy is also available free of charge by contacting either ASIC or the ACCC (contact details in appendix A).

What this guideline covers

This guideline explains how Commonwealth consumer protection laws relevant to collection apply. These laws include:

- Parts IVA and V of the *Trade Practices Act 1974*
- Part 2, Division 2 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Part 2 of the guideline provides practical guidance on what collectors and creditors should and should not do to minimise the risk of breaching the laws administered by ASIC and the ACCC.

Part 3 of the guideline looks at the prohibitions and remedies against debt collectors who engage in:

- the use of physical force, undue harassment or coercion
- misleading or deceptive conduct
- unconscionable conduct.

Penalties

Part 3 also contains information on penalties for breach of the Commonwealth consumer protection laws.

Other laws

This guideline also refers to other laws and regulations not administered by the ACCC and ASIC, but which are relevant to debt collection. These include:

- Commonwealth privacy laws—administered by the Office of the Privacy Commissioner
- state and territory fair trading laws—which include conduct prohibitions mirroring those of the Commonwealth consumer protection laws
- the Uniform Consumer Credit Code—uniform state and territory legislation administered by the state and territory fair trading and consumer affairs agencies
- the *Bankruptcy Act 1966*—administered by the Insolvency Trustee Service Australia.

Various other laws, regulations and industry codes are also referred to in passing throughout the guideline. For a non-exhaustive list of other applicable laws, see appendix B. Also see the comments under the heading, 'Relationship with court debt recovery processes' on p. 6.

Note: this guideline does not seek to deal with law on mortgages and other securities or guarantees.

Why has this guideline been developed?

This guideline replaces the ACCC's *Debt collection and the Trade Practices Act* published in June 1999. Since then, ASIC has become responsible for consumer protection in financial services.² ASIC and the ACCC now share responsibility at the Commonwealth level for protecting people who are debtors or alleged debtors from unacceptable collection conduct.

This guideline reflects the joint responsibilities of the ACCC and ASIC for collection activity. It also takes account of:

- recent cases that interpret the law governing debt collection³
- changes to the structure and practices of the collection industry in recent years
- stakeholder feedback after consultation about the guideline.

What does this guideline do?

The guideline:

- explains ASIC's and the ACCC's view of the laws that we administer
- provides examples on how the law has been applied in particular cases
- gives guidance on what creditors and collectors should and should not do if they wish to **minimise** the risk of breaching the laws we administer
- notes other laws and regulations not administered by the ACCC and ASIC that are relevant to the debt collection context.

2 ASIC's role is set out in the *Australian Securities and Investments Commission Act 2001*, the *Corporations Act 2001* and other legislation. See also appendix A of this guideline.

3 See references in part 3 of this guideline.

Note:

- This guideline does **not** have legal force. ASIC and the ACCC cannot make law in this field—that is the role of parliament. Nor can ASIC and the ACCC provide a definitive interpretation of the law—that is the role of the courts.⁴
- ASIC and the ACCC must approach each potential enforcement matter on a case-by-case basis, taking account of all relevant circumstances. Compliance with this guideline cannot provide a guarantee against enforcement action by ASIC or the ACCC.
- Businesses may also be subject to action by private parties.

The ACCC and ASIC encourage businesses engaging in collection activity to follow this guideline and incorporate it into their staff training, both in terms of the text and the spirit of the document.

This guideline focuses on individual debtors

The guideline has been developed with particular reference to collecting debts from individual debtors. However, many of the laws and principles discussed will also be relevant to the collection of corporate or business debts.

This guideline applies to creditors as well as collectors

This guideline applies to creditors directly involved in debt collection as much as to specialist external agencies. When a creditor uses an agent for collection, the creditor (as principal) will generally be liable for their agent's conduct when that conduct comes within the agent's express, implied or ostensible authority.

4 Although this guideline does not have legal force, it should be noted that:

- A creditor or collector may agree contractually to adhere to this guideline. This will be the case, for instance, if the terms and conditions for a particular product or service stipulate that the provider of the service will abide by the guideline itself, or by an industry code of conduct requiring compliance with the guideline. In these circumstances, provisions of the guideline may be legally enforceable by the debtor on the basis of the creditor's contractual undertaking.
- Industry complaints handling schemes may consider this guideline when making binding determinations on scheme members. See further under part 2, section 23, 'The role of independent external dispute resolution schemes'.

A creditor may be responsible for their agent's collection activities even if the agent acts in a way that is contrary to an agreement or understanding between the creditor and agent about how the collection is to be undertaken.

A creditor may also remain liable for conduct regarding a debt despite having sold or assigned the debt. Liability will generally remain for misconduct occurring before the sale or assignment of the debt.

The ACCC and ASIC encourage creditors to use this guideline to ensure their in-house collection activities are compliant with the laws we administer, and to incorporate this guideline into their contractual and compliance auditing arrangements with their agents and assignees.

Debtors' responsibilities

While this guideline focuses on the responsibilities of collectors, the ACCC and ASIC recognise that debtors have responsibilities too. Debtors are legally responsible for paying the debts they legitimately owe, and they should not deliberately try to avoid their obligations.

Whenever possible, debtors should take action before they get into difficulties. Debtors experiencing financial hardship should promptly contact their creditor, or the collector if the debt has already passed to a collection business, to negotiate a variation in payments or other arrangement. In seeking a variation, debtors should be candid about their financial position, including their other debts.

We also recommend that debtors in difficulties consider seeking the assistance of a community-based financial counsellor, solicitor or other qualified adviser who may be able to help them with a debt negotiation.

The ACCC and ASIC's *Dealing with debt: your rights and responsibilities* gives consumers detailed advice on dealing with debt matters. We encourage creditors and collectors to refer debtors to this publication and to the services referred to in the paragraph above when appropriate.

Relationship with court debt recovery processes

Broadly, debts may be recovered either through the courts, or by using creditor or collection agency personnel to negotiate repayments. Debt recovery through the courts is largely regulated by state and territory law and the procedural rules of the courts. The recovery process may also include the repossession of securities or other legal enforcement of security interests.

This guideline is mainly concerned with non-court debt recovery processes and **informal** collection activities after a judgment. It does not claim to limit a creditor's right to:

- conduct legal repossession activities and other legal enforcement of legitimate security interests
- seek and obtain pre-judgment remedies, for example, orders to prevent the removal or transfer of property from the jurisdiction
- seek and obtain judgment for a debt
- enforce judgment through a court process—including examination hearings, instalment orders, orders for the seizure and sale of property, garnishment or attachment orders
- undertake all necessary procedures (for example, for serving documents) associated with these actions.

However, a collector must not threaten action (legal or otherwise) that they are not legally permitted to take, or do not have instructions or authority to take. How legal action is threatened or employed can, in certain circumstances, amount to unconscionable conduct or harassment. A collector also must not represent an entitlement to seize goods beyond that granted by law. See part 2, sections 19–21 of this guideline for more information.

Read this guideline keeping in mind the rights given by, and obligations imposed by the courts under debt recovery and other laws.

A flexible, fair and realistic approach to collection

People often default on their debts as a result of circumstances beyond their control—such as unemployment, illness and family breakdown. While there are cases of fraud and deliberate evasion, most people are honest and want to meet their commitments if given a reasonable opportunity to do so.

On the other hand, most creditors want to minimise their exposure to debt collection and, to this end, most will be prepared to work flexibly with customers who get into difficulties. We encourage such flexibility on the part of creditors and their agents. This includes making reasonable allowance for a debtor's ongoing living expenses, and recognising that debtors experiencing financial hardship will often have a number of debts owing to different creditors.⁵

When debtors act promptly and responsibly, and collectors are flexible, fair and realistic, the need for collection activity will be greatly reduced.

Roles of ASIC and the ACCC

For more information on the respective roles of ASIC and the ACCC for debt collection see appendix A of this guideline.

⁵ Note that when a debt relates to a contract regulated by the Uniform Consumer Credit Code (administered by the states and territories), a debtor may have a statutory right to a variation when certain conditions are met. Repayment negotiations generally, including hardship variations under the UCCC, are discussed in part 2, section 13 of this guideline.

Part 2: Practical guidance

In this guideline, the term 'debtor' includes an alleged debtor, and the term 'debt' includes an alleged debt.

Who is this part addressed to?

This part of the guideline is addressed directly to all involved in collection activity, whether as creditors, agents or assignees [you]. Reference is also made to the specific responsibilities of creditors of contracted or assigned debts.

1. Contact for a reasonable purpose only

- [a] Communications with the debtor must always be for a reasonable purpose, and should only occur to the extent necessary.⁶
- [b] It may be necessary and reasonable for you to contact a debtor to:
- give information about the debtor's account
 - convey a demand for payment
 - accurately explain the consequences of non-payment, including any legal remedies available to the collector/creditor, and any service restrictions that may apply in the case of utilities (for example, electricity)
 - make arrangements for repayment of a debt
 - put a settlement proposal or alternative payment arrangement to the debtor
 - review existing arrangements after an agreed period
 - ascertain why earlier attempts to contact the debtor have not been responded to within a reasonable period, if this is the case
 - ascertain why an agreed repayment arrangement has not been complied with, if this is the case

⁶ You should also not pursue a person for a debt unless you have reasonable grounds for believing the person you contact is liable for the debt: see section 12 of part 2 of this guideline.

- investigate whether the debtor has changed their residential location without informing you, when there are grounds for believing this has occurred
- sight, inspect or recover a security interest

or for other similar purposes.⁷ You may also contact a debtor at the debtor's request.

[c] However, it is not reasonable or acceptable to contact a debtor to:

- frighten or intimidate the debtor
- demoralise, tire out or exhaust the debtor
- embarrass the debtor in front of other people

or for other similar purposes.⁸ See further under part 2, section 16 and part 2, section 17 of this guideline.

2. Making contact with the debtor

- [a] Under the privacy laws, collectors have obligations to protect the privacy of debtors.⁹ When making direct contact, your first task must always be to ensure the person you are dealing with is the debtor. This must be done every time you make contact **before** you divulge any information about the debt, the process for its recovery or other confidential information.
- [b] If you are considering divulging your identity as a collector before being sure that you are dealing with the debtor (for example, if requested by the person you are dealing with), then you may do so if that would not have the effect of divulging information such as that the debtor has a debt.
- [c] The limits on disclosing information to third parties apply to the debtor's spouse, partner and/or family as much as they apply to other third parties.¹⁰
- [d] Having established the debtor's identity, you should then identify who you are and whom you work for, and explain the purpose of the contact.

7 However, there are circumstances when further contact with a debtor may not or may no longer be appropriate: see part 2, sections 4, 12 and 14–15 of this guideline.

8 Note also that 'unreasonable communication with a debtor' is specifically prohibited as undue harassment or coercion by s. 26(2)(i) of the *Fair Trading Act 1992 (ACT)* and s. 21(2)(h) of the *Fair Trading Act 1999 (Vic)*.

9 Privacy related guidance in this section has been written with advice from the Office of the Privacy Commissioner (Federal). For information on privacy issues, see part 2, section 7 of this guideline.

10 For authorised representatives, see part 2, section 8 of this guideline.

- [e] When you make initial contact, you should also give at least basic information about the debt, including the name of the creditor and any assignee of the debt, and details of the account and the amount claimed. A debtor may request further information or documentation of the debt: see part 2, section 10 of this guideline.
- [f] Do not misrepresent your identity in any way—for example, do not falsely state or imply that you are or work for a solicitor, or are a court or government official.
- [g] If on first contact the debtor denies liability for the debt or raises an issue indicating a dispute about the debt, you should also take the steps referred to in part 2, section 12 of this guideline.

3. Hours of contact

- [a] Only contact the debtor or a third party at reasonable hours, taking into account their circumstances and reasonable wishes. You can normally assume that the following are appropriate contact times, subject to the qualifications set out:

Reasonable contact times		
These times apply to both debtors and third parties ¹¹ and are the local times in the debtor's state or territory.		
Contact by telephone	Monday to Friday	7.30 am–9.00 pm
	Weekends	9.00 am–9.00 pm
	National Public Holidays	No contact recommended ¹²
Face-to-face contact	Monday to Friday	9.00 am–9.00 pm
	Weekends	9.00 am–9.00 pm
	National Public Holidays	No contact recommended ¹³
All workplace contact	Debtor's normal working hours if known, or 9.00 am–5.00 pm on weekdays	

¹¹ See definition of 'third party' in appendix C. Contact with debtors' representatives such as financial counsellors and solicitors would normally occur during ordinary business hours.

¹² It will generally be inappropriate to contact debtors on New Year's Day, Australia Day, Good Friday, Easter Sunday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day.

Contact may also be prohibited on other days in particular jurisdictions. For instance, s. 43 of the Fair Trading Act (SA) prohibits telephone calls or personal calls on any public holiday (state or national) to demand payment.

¹³ *ibid.*

- [b] We assume that contact will usually be by telephone. The above contact times for face-to-face contact, including contact at the debtor's workplace, need to be read in conjunction with the comments on face-to-face contact in part 2, section 6 of this guideline.
- [c] Also, there may be reasons why contact during the above times is unreasonable, or contact outside of these times is reasonable. For instance, a debtor may ask that contact be made at other or more restricted times. This may be for a range of reasons, for example (these examples are illustrative only):
- the debtor is a shift worker
 - the debtor is responsible for children and contact around meal times is not convenient
 - the debtor does not wish to be contacted when other family members are present.

In these and other such cases, the reasonable wishes of the debtor should be respected, and contact limited to the times requested by the debtor.

- [d] However, a collector may alter the time of contact if, after reasonable efforts over a reasonable period of time to contact the debtor during normal hours or at the times requested by the debtor, the collector has not been able to do so.

4. Frequency of contact

- [a] Debtors and third parties are entitled to be free from excessive communications from collectors. Communications must always be for a reasonable purpose, and should only occur to the extent necessary: see part 2, section 1 of this guideline. The guidance on frequency of communications that follows (section 4) should be read subject to this general principle.
- [b] References to the number of contacts with debtors should be read as the number of contacts **per account**, rather than per individual debtor. It may be acceptable to have a higher overall level of contact with an individual debtor if this contact relates to more than one account. Where possible, however, collectors should seek to discuss multiple accounts with a debtor during the one contact to avoid unnecessary communications.

Telephone contacts, letters and messages

- [c] Unnecessary or unduly frequent contacts may amount to undue harassment of a debtor. We recommend that you do not contact a debtor more than three times per week, or 10 times per month at most (when contact is actually made) and only when it is necessary to do so.¹⁴

This contact includes:

- speaking to the debtor by telephone—including contacts when the debtor terminates the call
 - letters sent to the debtor.
- [d] Unnecessary or unreasonable contact by email, SMS or telephone messages (whether left on a voicemail service, on an answering machine or with a third party) must also be avoided.
- [e] Stop contacting efforts once you have reached the above limits **unless** the debtor asks for the contact, or there is some other legitimate reason for making further contact (for example, if you are in the process of negotiating an agreement with a willing debtor).
- [f] Once you have made contact, leave a reasonable interval before next contacting the debtor. Give the debtor time to respond to your previous communications, and/or to organise payments if this has been agreed.

Face-to-face contacts

- [g] See our comments in part 2, section 6 on when face-to-face contact with the debtor is appropriate. You should only make face-to-face contact when such contact is necessary and reasonable. In such cases, we recommend that you do not make more than one face-to-face contact with a debtor per fortnight (if contact with the debtor actually takes place).¹⁵

14 Note that s. 31(2) of the Property and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulation 2001 (Qld) prohibits unsolicited communication with a debtor more than twice a week.

15 In *ACCC v Esanda Finance Corporation Ltd* [2003] FCA 1225, the court ordered the defendant to restrict its agents to a **total** of five personal visits [for the period of collection] unless a visit was specifically requested by the customer or a repayment agreement had been made and subsequently breached (in which case a further five visits may be made).

Third parties

- [h] We recommend that you do not contact a third party to obtain location information more often than once every six months. An exception is when permission to make further contact has been sought and given in advance by the third party. Contact with third parties is discussed more generally in part 2, sections 7 and 18 of this guideline.

Undue harassment

- [i] Unduly frequent contact designed to wear down or exhaust a debtor, or likely to have this effect, constitutes ‘undue harassment’ or coercion and must be avoided. This is particularly likely if the collector makes a number of phone calls or other contacts in rapid succession. The specific prohibition against undue harassment is discussed further in part 3 of this guideline.

Undue harassment explained

Justice Hill of the Federal Court has explained the meaning of undue harassment as follows:

The word harassment means in the present context persistent disturbance or torment. In the case of a person employed to recover money owing to others ... it can extend to cases where there are frequent unwelcome approaches requesting payment of a debt. However, such unwelcome approaches would not constitute undue harassment, at least where the demands made are legitimate and reasonably made. On the other hand where the frequency, nature or content of such communications is such that they are calculated to intimidate or demoralise, tire out or exhaust a debtor, rather than merely convey the demand for recovery, the conduct will constitute undue harassment. ... Generally it can be said that a person will be harassed by another when the former is troubled repeatedly by the latter. The reasonableness of the conduct will be relevant to whether what is harassment constitutes undue harassment.

ACCC v The Maritime Union of Australia [2001] FCA 1549

5. Location of contact

- [a] In most cases, the debtor's home will be the appropriate place to contact a debtor, with contact by letter or telephone generally being the appropriate mode of contact. However, if a debtor provides a telephone (including mobile phone) contact number as the means of contact, contact using that number will be appropriate whatever the debtor's location. Face-to-face contact is considered in the next section.
- [b] Sometimes, a debtor may not wish to be contacted at their home. If the debtor provides an alternative and reasonable location for contact and is able to be contacted at that location, the debtor should not be contacted at home.
- [c] Contact must not involve a breach of your privacy obligations to the debtor—see part 2, section 7 of this guideline.

6. Face-to-face contact

- [a] We recommend that collectors only make personal or 'field' visits if reasonable efforts to contact a debtor by other less intrusive means have been unsuccessful and face-to-face contact is **necessary**.
- [b] Making a personal visit may be justified when a debtor refuses or fails to respond to other means of communication. Face-to-face contact may also be justified to verify the identity or location of a debtor when this is reasonably in doubt.
- [c] **Note**—this guidance is not intended to limit otherwise legally permissible visits:
 - to sight, inspect or recover security interests
 - for the serving of legal process
 - for the enforcement of court orders by officers appropriately authorised by the relevant court.

Visiting the debtor's home

- [d] Visits to a person's home will often raise issues about the privacy of the debtor and/or third parties. This subsection should be read in conjunction with part 2, section 7. This subsection should also be read in conjunction with part 2, section 18 of this guideline.
- [e] We recommend the following when visiting a debtor's home:
- Generally, do not visit the debtor's home uninvited when it is possible to ask permission to visit the debtor. If the debtor refuses the visit, you must not visit them.¹⁶
 - State clearly to the debtor the purpose of any visit before making the visit.
 - Negotiate a mutually convenient time for the visit. We recommend that visiting times be consistent with the reasonable contact times set out in part 2, section 3, unless the debtor agrees to another time.
 - Before the visit takes place, allow the debtor time to seek advice, support and/or the presence of a third party if they choose.
 - Do not visit the debtor's home if you know of special circumstances (for example, the debtor is seriously ill or mentally incapacitated) which would make face-to-face contact inappropriate. Leave the debtor's premises immediately if you become aware of such circumstances during the visit.
- [f] You must leave the debtor's premises immediately if, at any time, you are asked to do so. As well as breaching the prohibition on undue harassment and coercion¹⁷ refusing to leave someone's property on request is likely to constitute a breach of civil or criminal trespass laws. This applies to service or trades people claiming they are not permitted to leave a consumer's residence without receiving payment.
- [g] Whether before or after visiting a debtor, or at any other time, do not stay in the vicinity of the debtor's home for an extended period of time or engage in any other conduct that may suggest to the debtor or a third person that the debtor or a member of the debtor's household is under surveillance.

¹⁶ If you enter the debtor's premises when instructed not to do so, you risk breaching civil or criminal trespass laws.

¹⁷ In Victoria, the failure to leave a person's private residence when requested to do so is deemed to constitute undue harassment or coercion under s. 21(2)(k) of the *Fair Trading Act 1999* (Vic.).

Visiting the debtor's workplace

- [h] Visiting a debtor's workplace should only be undertaken as a last resort unless:
- the debtor is the proprietor or a director of a business to which the debt relates
 - the debtor has specifically requested or agreed to the visit.
- [i] If a debtor has asked that you do not visit them at their workplace, and has provided an alternative and effective means of communication, do not visit them at their workplace.
- [j] Visiting a debtor at their workplace will always involve a risk of breaching the collector's privacy obligations to the debtor.¹⁸ Collectors will generally be asked to explain who they are and why they are visiting, and it will generally be difficult to provide an explanation without giving confidential information to third parties.
- [k] Visiting a debtor at their workplace uninvited may also be seen as an attempt to put pressure on the debtor by embarrassing or threatening to embarrass them in front of work colleagues. If this is found to have occurred, such conduct is likely to constitute undue harassment or coercion of the debtor.
- [l] If you do visit a debtor's workplace:
- under no circumstances reveal to a third party, whether directly or indirectly, that the visit is in connection with a debt¹⁹
 - under no circumstances discuss the debt in front of co-workers²⁰
 - leave immediately if, at any time, you are asked to do so by the debtor or another person.²¹
- [m] A visit to a debtor's workplace should be undertaken when you know the debtor will normally be at work. If you do not know the debtor's working hours, we recommend that you limit any visit to between 9 am and 5 pm on weekdays.
- [n] Whether before or after visiting a debtor, or at any other time, do not stay in the vicinity of the debtor's workplace for an extended period, or engage in any other conduct that may suggest to the debtor or a third person that the debtor is under surveillance.

¹⁸ See part 2, section 7 of this guideline.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ If you do not leave the debtor's workplace when asked to do so, you risk breaching tort and/or criminal trespass laws. Also, in Victoria, the failure to leave a person's workplace when requested to do so is deemed to constitute undue harassment or coercion under s. 21(2)(k) of the *Fair Trading Act 1999* (Vic.).

7. Privacy obligations to the debtor and third parties

The following information on collectors' privacy obligations has been written with advice from the Office of the Privacy Commissioner (Federal), which has responsibility for privacy regulation at the Commonwealth level.²²

- [a] A debtor's personal information should always be treated with respect. The improper use of a debtor's personal information may cause that person serious difficulties. There are legal obligations under the *Privacy Act 1988 (Cwlth)* (the Privacy Act) designed to protect the privacy of a debtor's personal information.

Personal information means information or an opinion, whether it is true or not, about an individual that can reasonably allow the individual to be identified.²³

- [b] A debtor's personal information may be regulated by the Privacy Act in a number of ways. For example, obtaining a debtor's contact details from their employer is **collecting** their personal information. Telling a debtor's neighbour the reason for trying to find the debtor will be **disclosing** personal information about the debtor.²⁴

Collecting and disclosing the debtor's personal information

- [c] Information handling by private sector organisations such as creditors and debt collectors is regulated, in part, by the National Privacy Principles (the NPPs).²⁵ There are several key obligations around information handling:
- collect information directly from the debtor whenever possible
 - only collect information that is necessary to recover the debt—for example, do not write down extra information about the debtor from an identifying document just because it might be useful
 - collect information by fair means

22 The Office of the Privacy Commissioner (Federal) can be contacted on 1300 363 992 or www.privacy.gov.au. See also under 'Privacy laws' in appendix B of this guideline.

23 See s. 6 of the Privacy Act for the definition of 'personal information'.

24 For more information about these and other key concepts, see *Guidelines to the National Privacy Principles* (the NPP guidelines); available at www.privacy.gov.au/publications/nppgl_01.html.

25 For the NPPs, see www.privacy.gov.au/publications/npps01.html; and the NPP guidelines generally on how the NPPs are applied.

- when the debtor's information is collected, whether from a creditor or from the debtor, take reasonable steps to let the debtor know that it has been collected and what is going to be done with it²⁶
- when making inquiries about a debtor from a neighbour or an employer, do not disclose information about the debtor, such as indicating that you are collecting a debt
- for the same reason, be careful about what information is contained in messages left on answering machines.

[d] Generally, personal information should only be used and disclosed for the purpose for which it was collected. There are some limited exceptions to this rule.²⁷

What you should do with the debtor's personal information

[e] Remember the following:

- if the information is no longer needed for an allowable purpose, destroy it or permanently de-identify the record²⁸
- if you keep the information for any time, make sure it is accurate, complete and up to date
- if the information is kept for any time, ensure it is secure against loss or unauthorised handling
- if the debtor wants to see their information they have a right to do so and to correct it if it is wrong.

Rights of third parties

[f] Collectors also have privacy obligations to third parties whom they contact. Under National Privacy Principle 1, the personal information of third parties may only be collected (i.e. recorded) if this is **necessary** for one or more functions or activities of the collector. Third parties must also be advised if their personal information is collected.

26 Advice about what steps might be reasonable in certain circumstances can be found in the NPP guidelines at www.privacy.gov.au/publications/nppgl_01.html.

27 Advice about the operation of NPP 2 and its exceptions can be found in the NPP guidelines at: www.privacy.gov.au/publications/nppgl_01.html.

28 See NPP 4.2. Allowable purposes are those permitted by NPP 2. Advice about destroying or de-identifying personal information that is no longer required is available in the NPP guidelines at: www.privacy.gov.au/publications/nppgl_01.html.

Obligations regarding consumer credit reports

- [g] Part IIIA of the Privacy Act also regulates the handling of personal information contained in consumer credit reports.²⁹ Credit providers should take care what information from a credit report is made available to a debt collector to recover a debt. For example, a credit provider should not disclose to an externally contracted debt collector a credit report or any information from a credit report apart from:
- details about the debt
 - the name and addresses of the debtor
 - any court judgments or bankruptcy orders against the debtor.³⁰
- [h] While a debtor may have a default listed against them with a credit reporting agency, there are rules about who may make such a listing and when this can be done.³¹ For example, when a debtor's default has already been listed with a credit reporting agency, that default listing should only be updated to reflect who is currently owed the debt, rather than being separately listed again.

8. When a debtor is represented

- [a] A debtor has a right to have an authorised representative (such as a financial counsellor, financial advisor, community worker, solicitor, guardian or carer) represent them or advocate on their behalf about a debt.
- [b] Except in the circumstances outlined in the next paragraph, you should not:
- contact a debtor directly after you know, or should know, that the debtor is represented
 - refuse to deal with an appointed or authorised representative, whether by direct refusal or by placing unnecessary obstacles in the way of the authorised representative, e.g. by insisting on a particular style or form of authorisation when the written authority provided already includes the necessary information.³²

29 For general advice on credit reporting and the obligations around consumer credit reports, see www.privacy.gov.au/act/credit/index.html.

30 See s. 18N of the Privacy Act at: www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s18n.html. See also Privacy Act Fact Sheet 2, Mercantile agents (debt collection agents) at: www.privacy.gov.au/publications/crma.html.

31 See s. 18E of the Privacy Act at: www.austlii.edu.au/au/legis/cth/consol_act/pa1988108/s18e.html.

32 In general, any form of authority consistent with requirements of the *Privacy Act 1988 (Cwlth)* should be regarded as acceptable.

- [c] You are entitled to contact a debtor directly if:
- the representative does not respond to your communications within a reasonable time (normally 14 days)
 - the representative advises that they do not have instructions from the debtor about the debt
 - the representative does not consent to act
 - the debtor specifically requests direct communication with you
 - the representative is not a solicitor and you advise that written authority stating that you are to communicate through the debtor's representative is required, and the debtor or their representative does not provide that authority.
- [d] When an authorised representative does not agree to have written correspondence redirected to the representative, such correspondence should continue to be sent directly to the debtor.

9. Record keeping

- [a] Accurate record keeping by all parties is vital to promptly resolve disputes and allow collectors and debtors to limit or avoid costly collection activity.
- [b] Collectors should ensure:
- they maintain accurate, complete and up-to-date records of all communications with debtors, including the time, date and nature of calls about the debt, records of any visits in person, and records of all correspondence sent
 - all payments made are accurately recorded (including details of date, amount and payment method).
- [c] Creditors should ensure:
- collectors are provided with accurate, up-to-date information about assigned or contracted debts³³
 - retained information and documentation can be accessed and forwarded to collectors in a prompt and efficient manner
 - settled debts are not assigned or contracted out for collection.

³³ Note, however, that there are limits on information mercantile agents are permitted to receive from credit providers under Part IIIA, *Privacy Act 1988*. More generally on privacy issues: see part 2, section 7 of this guideline.

Recording debt settlements

- [d] Creditors and collectors have a responsibility to ensure that:
- settlements are fully documented in relevant files and computer systems
- and**
- before tranches of debts are assigned, sold or contracted out for collection, all reasonable steps are taken to ensure settled debts are not included.
- [e] Once a debt is settled, any credit reporting agency report on the debtor must be updated appropriately.³⁴

10. Providing information and documents

- [a] Requests by debtors for information and/or documentation about an account should not be ignored.
- [b] In certain circumstances, failure to provide information may constitute misleading and deceptive conduct or unconscionable conduct.
- [c] If a debt relates to a consumer loan or credit card facility regulated by the Uniform Consumer Credit Code³⁵, specific obligations are imposed on creditors to provide information and documents on request. These are set out in the following sections of the code:
- section 34 (Statement of amount owing and other matters)³⁶
 - section 36 (Disputed accounts)³⁷
 - section 76 (Statement of payout figure)³⁸
 - section 163 (Copies of contracts and other documents).³⁹

34 More generally on credit reporting, see part 2, section 7 of this guideline.

35 The UCCC is a scheme of uniform state and territory legislation administered by the state and territory fair trading/consumer affairs agencies. For more information about the code, go to the inter-governmental website: www.creditcode.gov.au. Materials in this guideline related to the UCCC have been prepared in conjunction with the chair of the UCCC management committee.

36 Information to be provided to the debtor or loan guarantor if requested under s. 34(1), UCCC:

- (a) the current balance of the debtor's account
- (b) any amounts credited or debited during a period specified in the request
- (c) any amounts currently overdue and when such amount became due
- (d) any amount currently payable and the date it became due.

37 If a particular liability is disputed in writing, the credit provider must explain in writing in reasonable detail how the liability arises: s. 36(1), UCCC.

38 In response to a written request from a debtor or loan guarantor, a credit provider must provide a statement of the amount required to pay out a loan (other than a continuing credit contract facility) at a particular date. Details of items that make up this amount must also be provided if requested: s. 76(1), UCCC.

39 This section covers loan contracts, mortgages, guarantees, credit-related insurance contracts in the credit provider's possession, and notices previously given.

- [d] In addition, subscribers to industry codes of conduct may be subject to information and document disclosure requirements.⁴⁰ Debtors also have a right to access personal information held about them under National Privacy Principle 6 (subject to certain limits).⁴¹
- [e] If a debtor requests information about an amount claimed as owing, or how that amount has been calculated, the creditor should normally provide the debtor with an itemised statement of the account clearly specifying:
- the amount of the debt and how it is calculated
 - details of all payments made and all amounts (including principal, interest, fees and charges) owing.
- [f] Creditors should also provide copies of contracts and related documents if these are requested.⁴²
- [g] Information and documents should be provided in a timely fashion. The Uniform Consumer Credit Code sets out timeframes to be complied with when the debt relates to a consumer loan or credit card facility.⁴³ These timeframes also provide a guide to what is reasonable for accounts that are not UCCC-regulated.
- [h] Except for undisputed amounts, all collection activity should be suspended until the account information and/or documents requested have been provided to the debtor. See part 2, section 12 of this guideline.

Responsibility for providing information and documents

- [i] Under the UCCC and more generally, creditors are responsible for ensuring that information and documents requested by debtors are provided to them. Depending on arrangements between the creditor and its agent or assignee, such information may be provided either through the agent or assignee or directly by the creditor.⁴⁴

40 For example, subscribers to the Code of Banking Practice (available at www.bankers.asn.au) must comply with code requirements relating to provision of copies of documents (cl. 11) and statements of account (cl. 24).

41 More generally, see part 2, section 7 of this guideline.

42 Providing a copy of the contract can also assist if a debt has been incurred with a business operating under a trading name that is different to the creditor name supplied to the debtor.

43 Under s. 34 (2) of the UCCC, a statement must be provided within 14 days if all information requested relates to a period 1 year or less before the request is given. Otherwise, a 30-day timeframe applies. Having provided a written statement, a credit provider is not required to provide a further statement if requested for a 3-month period: s. 34(4) of the UCCC. Similar timeframes apply to providing documents under s. 163 of the UCCC.

44 Note, however, that Part IIIA of the Privacy Act limits the information mercantile agents are permitted to receive from a credit provider. More generally on privacy issues, see part 2, section 7 of this guideline.

- [j] Creditors and collectors need to have appropriate contractual and operational arrangements in place to facilitate the provision of information and documents. This includes prompt and efficient processes for agents relaying requests to creditors, and for creditors responding to those requests. When it is arranged for the creditor to respond directly to the debtor, there will have to be liaison between creditor and collector to ensure that collection activity is suspended until the account information or documents requested have been provided.

11. Consistent and appropriate correspondence

- [a] Your written correspondence—including automatically generated letters—should be consistent with both your records and your verbal communications with the debtor, and vice versa.
- [b] Letters and other correspondence should reflect the repayment arrangements that you have made with the debtor.⁴⁵ Such correspondence must not make inaccurate representations about:
 - the frequency of contact (for example, state that ‘numerous attempts have been made to contact you by telephone’ or ‘numerous previous letters have been sent’ if this is not the case)or
 - liability or the amount owing (for example, state or imply that a debtor is liable for collection charges or fees that you are not legally entitled to claim; or demand payment for an amount that does not account for payments already made).
- [c] It is not appropriate to send reminders or other correspondence about the consequences of non-payment (including automatically generated letters) when:
 - a temporary stay of action or enforcement has been granted
 - you have not provided the information you agreed to provide (whether or not liability for the debt has been disputed)
 - court proceedings regarding the debt have been commenced.⁴⁶

⁴⁵ See part 2, sections 13 and 14 regarding repayment negotiations.

⁴⁶ However, if judgment is subsequently obtained, further correspondence or other communication may be appropriate (for example, to outline alternatives to enforcement of the judgment debt through the courts). For a more general discussion of legal action and procedures, see part 2, section 21.

12. If liability is disputed

[a] You must not pursue a person for a debt unless you have reasonable grounds for believing the person you contact is liable for the debt.⁴⁷

[b] If a person you contact about a debt claims that:

- they are not the alleged debtor
- the debt has been paid or otherwise settled

and you have not already confirmed their identity and liability, you should suspend further collection activity (including credit report listing) until the debtor's identity and ongoing liability have been confirmed.

[c] If you continue with collection activity without properly investigating claims that a debt is not owed, you are at considerable risk of breaching one or more of the legal prohibitions of the Commonwealth laws if the debtor is not in fact liable for the debt.

[d] It is misleading to state or imply that the debtor must prove they are not liable for the debt. In legal proceedings, proof of the debt lies with the person alleging the debt is owed to them.

[e] If the creditor and/or collector are not able to establish the debtor's ongoing liability for the debt when challenged, collection activity should cease. The creditor should also consider providing a letter to the debtor advising that collection activity has ceased and the circumstances (if any) in which collection activity may be resumed in the future.

[f] If the parties are unable to resolve a dispute about liability for a debt or the amount owed, a creditor or collector may have an obligation to advise the debtor of internal or external dispute resolution processes available—see further under part 2, sections 22 and 23 of this guideline.

Formal denial of liability

[g] If a debtor verbally denies a debt and you require a written denial before you stop contact, tell the debtor of this requirement.

⁴⁷ For example, you should not send letters requesting payment or alleging a debt is owed to a person or group of persons who may only share a name or surname with the person who incurred the debt.

- [h] Subject to the next paragraph, further communication with a debtor, after the debtor has formally denied liability and/or stated an intention to defend any legal proceedings brought against them, is not appropriate. In these circumstances, you have the option of starting legal proceedings if you choose to pursue the debt.
- [i] However, further communication **in writing** may be appropriate after a formal denial of liability:
- to state or reiterate the basis of the creditor's claim and the consequences of legal action being taken
 - to advise the debtor of the creditor's intention to start legal proceedings, and the steps involved
 - to put a genuine proposal for settlement of the matter.

Further communication is also appropriate when it is subsequently authorised or requested by the debtor.

- [j] Further communication about any other debt, or any part of a debt that is not denied, remains appropriate.
- [k] If a court judgment is obtained for a debt for which liability had been denied, you are entitled to start or resume communication with the debtor for that judgment debt (assuming the judgment has not been set aside).

13. Repayment negotiations

- [a] We encourage creditors and collectors to work with debtors and to adopt a flexible and realistic approach to repayment arrangements. This includes:
- making reasonable allowance for a debtor's ongoing living expenses
 - recognising that debtors in difficulties will often have a number of debts owing to different creditors.
- [b] In some circumstances a prolonged period of negotiation about a debt may not be in the interests of the debtor. This may be the case, for instance, when a debtor's equity in their home or other security is reducing rapidly because they can no longer maintain minimum loan repayments. It is appropriate for creditors to take this kind of circumstance into account in their approach to negotiations with debtors.

- [c] Debtors experiencing financial hardship regarding their consumer loans or credit card facilities may apply to the creditor for a variation or change of their repayment arrangements on the grounds of hardship under the Uniform Consumer Credit Code (UCCC).⁴⁸
- [d] In addition, the Code of Banking Practice obliges subscribing banks to help debtors overcome their financial difficulties and advise them of any rights they may have under the UCCC.⁴⁹
- [e] You must not mislead the debtor in the context of repayment negotiations. For instance, you must not:
- advise a debtor that you do not, or are unable to enter into repayment arrangements when this is not the case
 - mislead a debtor about their rights to seek a repayment variation when such a right exists.
- [f] It is also unacceptable to pressure a debtor:
- to pay in full, in unreasonably large instalments, or to increase payments when you are aware they are unable to do so
 - to get further into debt to pay out an existing debt
 - to show proof of unsuccessful alternative credit applications before a repayment plan will be negotiated.
- [g] Creditors and collectors must ensure that repayment arrangements are fully documented.
- [h] The collector or creditor (as relevant) should provide a written copy of an agreed payment arrangement to the debtor on request. You should also consider offering to provide a written copy, even when this is not specifically requested, in situations where an ongoing arrangement for periodic payments has been agreed to.⁵⁰
- [i] Once finalised, repayment arrangements should be given a chance to work—see the next section.

48 Under s. 66 of the UCCC a debtor unable reasonably to meet their obligations (because of illness, unemployment or other reasonable cause) can apply to their lender to extend the loan repayment period and reduce their periodic payments and/or to postpone payments for a period. The debtor must reasonably expect to be able to discharge their obligations under the proposed arrangements. If the lender does not agree to the variation proposed, the debtor can apply to a court or tribunal with jurisdiction to hear applications: s. 68 of the UCCC. This regime is subject to a maximum 'floating threshold' linked to the cost of housing: for more information, search under 'hardship threshold' at www.creditcode.gov.au.

49 Section 25.2 of the Code of Banking Practice states in part: 'With your agreement, we will try to help you overcome your financial difficulties with any credit facility you have with us. We could, for example, work with you to develop a repayment plan'.

50 Note that when the debt relates to an account regulated by the UCCC, an agreement that defers or otherwise reduces the debtor's obligations for more than 90 days must be put in writing and given to the debtor: s. 65 of the UCCC.

14. Contact when a payment arrangement is in place

- [a] Generally, while an arrangement is in place, do not contact the debtor unless:
- the debtor asks you to
 - you wish to propose a **genuine** alternative or variant arrangement to benefit the debtor
 - the debtor does not comply with the terms of the agreement.

In addition, if you are required to provide or have committed to provide ongoing account statements to the debtor, you should continue to do so.

- [b] You are entitled to contact a debtor to review an informal arrangement that was made subject to review. However, repayment reviews should not be excessively frequent—we recommend a **minimum** of three months between reviews unless a further default occurs sooner.

15. Contact following bankruptcy or a Bankruptcy Act agreement

The following information on bankruptcy has been written with advice from the Insolvency Trustee Service Australia, the Commonwealth body responsible for regulating bankruptcy and Bankruptcy Act agreements.⁵¹

- [a] Under the Bankruptcy Act an unsecured creditor⁵² may lodge a proof of debt with the bankrupt's trustee. With limited exceptions set out in the Act, an unsecured creditor may not:
- take or continue legal action or allow recovery action to continue against the bankrupt person
- or
- take any remedy against the person or property of the bankrupt.

51 ITSA can be contacted on 1300 364 785 or www.itsa.gov.au. ITSA has published *Information for creditors about bankruptcy (June 2004)* available from the ITSA site.

52 A creditor who does not hold a mortgage, bill of sale or other security over an asset that can be sold if the debt is not paid.

- [b] A creditor or collector must also stop all informal collection activity against a bankrupt person for an unsecured debt.
- [c] Trying to persuade a bankrupt person that they should or must pay an unsecured debt covered by the bankruptcy will constitute misleading and deceptive conduct under the consumer protection laws.⁵³ Contacting a bankrupt person about such a debt may also amount to harassment of the debtor and/or unconscionable conduct.
- [d] Secured creditors⁵⁴ (including their agents) are entitled to take possession of secured assets and sell these if the bankrupt person is in default. Contacting a bankrupt debtor to sight, inspect and/or recover a security interest is permissible as long as the contact is consistent with the law.
- [e] In certain circumstances a bankrupt person may also agree to pay a secured creditor to keep an asset. Ongoing communication with the bankrupt person in connection with such an arrangement is also permissible.
- [f] Apart from becoming bankrupt, in certain circumstances a debtor may enter into a Part IX debt agreement or Part X personal insolvency agreement under the Bankruptcy Act. These agreements involve a process by which a debtor makes a proposal to the creditors. If this proposal is formally accepted by the creditors, both debtor and creditors are bound by it and creditors cannot enforce remedies to recover their debts as long as the agreements are valid and are not declared void by a court or otherwise terminated. As with bankruptcy, secured creditors' rights are not affected by these agreements.⁵⁵
- [g] Unsecured creditors (or their agents) should contact the trustee of a bankrupt estate, or the administrator of a Part IX or Part X agreement for information about the possibility of recovering their debt.

53 When a person is bankrupt, the debt may be recoverable from the bankrupt person's estate. In this case, the trustee of the bankrupt estate and not the bankrupt person should be contacted.

54 A creditor who holds a mortgage, bill of sale or other security over an asset that can be sold if the debt is not paid.

55 Further information is available on the ITSA website on www.itsa.gov.au or 1300 364 785.

16. Conduct towards the debtor

- [a] A debtor is entitled to respect and courtesy, and must not be subject to misleading, humiliating or intimidating conduct. Such conduct is likely to breach the Commonwealth consumer protection laws, and may breach other laws as well.
- [b] Do not:
- use abusive, offensive, obscene or discriminatory language
 - make disrespectful or demeaning remarks about a debtor's character, situation in life, physical appearance, intelligence or other characteristics or circumstances
 - embarrass or shame a debtor—for example, by sending open correspondence to a shared post-box, making the debtor's employer or co-workers aware that the debtor is being pursued for a debt, or creating an impression that the debtor is under surveillance⁵⁶
 - adopt an aggressive, threatening or intimidating manner—for example, by shouting at or continually interrupting the debtor, or by refusing to listen to what the debtor has to say
 - threaten to use, or use violence or physical force against a debtor, third party or against property⁵⁷
 - mislead a debtor about the nature or extent of a debt, or the consequences of non-payment.⁵⁸
- [c] Inappropriate behaviour by a debtor does not justify unprofessional conduct by the collector.
- [d] Where possible, the collector should attempt to diffuse such behaviour and refocus discussion on the outstanding debt and arrangements for its repayment. Debtor frustration and/or anger are more likely to be contained where viable and achievable repayment arrangements are proposed. In the event of violence or other extreme conduct, the appropriate response is to cease contact immediately and refer the matter to the police.

56 Such actions may also involve a breach of the collector's privacy obligations to the debtor: see part 2, section 7 of this guideline.

57 Such threats or actions may also constitute criminal conduct.

58 See further under part 2, sections 19–21 of this guideline.

CASE STUDY

A company was found to have breached the prohibitions against harassment and coercion when its agents pinned a man to the ground during a vehicle seizure, even though the company had a contractual right to seize a debtor's vehicle. The court found this to be the case notwithstanding the fact that the man threatened the agents with assault.

ACCC v Davis [2003] FCA 1227

17. Debtors at a special disadvantage

- [a] As with other people involved in trade and commerce, collectors must not engage in unconscionable conduct. Collectors are at risk of breaching this prohibition if they take advantage of the disability, weakness or vulnerability of a specially disadvantaged or vulnerable person.
- [b] Under the general law, 'special disadvantage' means that the consumer has a condition or is in a circumstance that seriously affects their ability to judge what is in their best interest. Factors that may give rise to a special disadvantage include:
- ignorance of important facts known to the staff or agent of the business
 - illiteracy or lack of education
 - poverty or need of any kind
 - the consumer's age
 - infirmity of body or mind
 - drunkenness
 - lack of explanation and assistance when necessary.⁵⁹
- [c] The statutory prohibition of unconscionable conduct, which builds on the general law concept, is considered further in this guideline.⁶⁰ It requires courts to consider all the circumstances of the case, including a number of specific factors such as whether undue influence has been exerted or unfair tactics have been adopted towards the consumer or a third party.

⁵⁹ See *Blomley v Ryan* (1956) 99 CLR 362, *Commercial Bank of Australia v Amadio* (1983) 151 CLR 447.

⁶⁰ See part 3, 'Prohibition of unconscionable conduct'.

- [d] You should consider whether any circumstances of special disadvantage or vulnerability apply to a debtor whom you contact. If it does, make sure you interact with the debtor in a way that does not take advantage of their disadvantage. Otherwise, your conduct is likely to be regarded as unconscionable and in breach of the law.
- [e] When you know or suspect a debtor lacks knowledge of the law, the debt recovery process, or the implications of non-payment of a debt, you must not take unfair advantage of their ignorance.
- [f] Depending on the circumstances, it may be appropriate to encourage the disadvantaged debtor to seek the assistance of a family member to support them, or a financial counsellor to act on their behalf.

Non-English speaking debtors

- [g] For someone who cannot speak English, appropriate interaction requires that the debtor can understand you. The assistance of an English-speaking family member or friend to translate should be sought, **but only if the debtor proposes or agrees to this**.⁶¹ Otherwise, a professional interpreter will need to be engaged.⁶²

18. Conduct towards family members and other third parties

- [a] You must not try to pressure a debtor by misleading, harassing, threatening or putting pressure on a debtor's spouse or partner, or a member of the debtor's family (especially a child) or other third parties.
- [b] All communication with third parties, including members of the debtor's family, must be consistent with the collector's privacy obligations to the debtor and the third party. See the discussion of privacy obligations to the debtor and third parties in part 2, section 7 of this guideline.

61 On the use of children (under 18 years) as translators, see the next section.

62 The Department of Immigration and Multicultural and Indigenous Affairs provides a 24-hour translating and interpreting service accessible on 131 450. User fees generally apply.

- [c] Communication with a third party can amount to a breach of the consumer protection laws if you:
- suggest or imply that the third party is liable for the debt when that person has no legal obligation to pay
 - suggest or imply that the third party should try and persuade the debtor to pay the debt, or that the third party should themselves pay the debt
 - put pressure on the debtor indirectly by involving the third party
 - embarrass or distress the debtor.
- [d] The standard for acceptable conduct towards third parties is, if anything, even higher than that applying to the debtor.
- [e] When it is appropriate to communicate with a third party, do so by telephone or other non-intrusive means wherever possible.⁶³ Only visit a third party at their home or other location when no other means of making contact is available, for example, when you only have or can only reasonably obtain an address.
- [f] Attempting to get information about a debtor from a third party under false pretences, for example, by pretending to be an associate or friend of the debtor, constitutes misleading and deceptive conduct and is against the law.
- [g] A third party is not obliged to give you information, nor agree to leave a message for a debtor, or otherwise help you. If a third party indicates they do not want to help you—however unreasonable that refusal may seem to you—stop contacting the third party.

Communication with the debtor's child

- [h] Attempting to pressure a debtor by instigating unauthorised communication with the debtor's child, or by making threats about the debtor's child (for example, threatening to report the debtor to the family welfare authorities) is likely to constitute undue harassment or coercion and/or unconscionable conduct within the meaning of the consumer protection laws, and is entirely unacceptable behaviour.

⁶³ On the hours and frequency of contact with third parties, see part 2, sections 3 and 4 of this guideline. If communication is made with a third party, the creditor or collector should avoid disclosing any information about the debtor including the existence of the debt: see part 2, section 7 of this guideline.

- [i] A collector should never communicate with a debtor's child (under the age of 18) about a debt, unless:
- communication with that child is specifically authorised and initiated by the debtor; or the debtor, on their own initiative, asks the child to act as a translator
 - the collector reasonably believes the child is willing and able to act as a translator or other intermediary
 - the collector reasonably believes that the child has not been coerced in any way by the debtor or another party.⁶⁴
- [j] The collector must take particular care to ensure their conduct and demeanour do not distress or embarrass the child. The collector should immediately cease communication involving the child if the child appears to become upset, or the child or a member of the child's family requests that the communication cease.

19. Representations about the consequences of non-payment

- [a] This section should be read in conjunction with part 2, sections 20 and 21 of this guideline.
- [b] You are entitled to accurately explain the consequences of non-payment of a debt, but must not misrepresent those consequences.⁶⁵ Misrepresentation may increase the risk of breaching laws against unconscionable conduct when the debtor is in a position of special disadvantage or vulnerability.⁶⁶
- [c] You must not threaten legal action if the start of proceedings is not possible, or not under consideration, or you do not have instructions to start proceedings.
- [d] Conversely, you must not state or imply that action will not be taken when the start of proceedings is intended or under consideration.

64 Note that in Victoria, any communication with a person under the age of 18 regarding a debt (if the person is not the debtor) is deemed to constitute undue harassment or coercion under s. 21(2)(k) of the *Fair Trading Act 1999* (Vic.).

65 Apart from constituting misleading and deceptive conduct under the consumer protection laws, misrepresenting the consequences of non-payment of a debt also constitutes undue harassment or coercion under s. 26(2)(b) *Fair Trading Act 1992* (ACT) and s21(2)(b) *Fair Trading Act 1999* (Vic.).

66 See part 2, section 17 of this guideline.

CASE STUDY

A company sent a debtor a letter implying that they would not or could not lawfully repossess a car without a court order, but then proceeded to repossess the car without this order. The court found this to be a contributing factor towards a finding of unconscionable conduct.

ACCC v Esanda Finance Corporation Ltd [2003] FCA 1225

A collection officer told a debtor by phone to accept a letter that was being delivered, and that no action would be taken. When the debtor contacted the collection officer through an authorised representative (a financial counsellor), they found that the collector had issued a Statement of Liquidated Claim and intended to proceed to judgment on the debt.

[e] Do not state or imply that:

- immediate possession will be taken of a debtor's home or other property when the debt is not secured by that property, or the creditor has not obtained judgment for the debt
- unsecured goods may be seized and sold without further legal action
- unsecured basic household items can be seized if the debtor is made bankrupt⁶⁷
- additional fees or charges will be added to the debt if payment is not made, if such fees or charges are not permitted by law⁶⁸
- additional fees or charges will be added to the debt where there is no contractual right to add these.

[f] Do not state or imply that:

- failure to pay a debt is a criminal matter when no fraud or other offence is involved
- a matter will be referred to the police when there is no intention to make such a referral
- criminal proceedings may be commenced by the creditor or agent or other private person themselves.⁶⁹

⁶⁷ Section 116 of the *Bankruptcy Act 1966* excludes these items from seizure by creditors.

⁶⁸ For example, s. 38 of the *Private Agents Act 1966* (Vic.) sets a statutory limit on the charges and costs that a commercial agent may charge, recover or receive from a debtor. Similarly, s. 347 of the *Property Agents and Motor Dealers Act 2000* (Qld) prohibits the recovery of a commercial agent's fees or charges (besides stamp duty and costs fixed by or payable under the rules of a court or a court order) in the absence of an agreement with the debtor allowing such recovery, and subject to the Consumer Credit Code.

⁶⁹ Such conduct will also breach s. 43(2)(a), *Fair Trading Act 1987* (SA).

Credit reporting

- [g] Do not state or imply that you intend to list a debt with a credit reporting service when:
- you do not have a genuine belief that the debtor is liable for the debt
 - you have no instructions to list the debt, and/or it is not your intention to do so
 - listing is not permitted by law or under a mandatory code⁷⁰
 - the debt has already been listed.
- [h] Equally, while it is appropriate to point out the possible consequences of a credit listing, you must not make misleading representations about those consequences.
- [i] Generally, it is not appropriate to make an adverse credit listing:
- when you are in the process of investigating a debtor's claim that a debt is not owed
 - if you are aware that the debtor has filed process with a tribunal or court disputing liability for the debt.
- [j] For more general information on credit reporting obligations, see part 2, section 7 of this guideline.

20. Representations about the legal status of a debt—including statute-barred debt

- [a] This section should be read with part 2, section 19, and part 2, section 21 of this guideline.
- [b] Collectors should not state or imply that legal action will or may be taken when a **defence at law** applies. Among other defences, a debtor will be able to claim a defence if:
- the debtor has been declared bankrupt⁷¹ and the debt(s) is unsecured
 - the right to pursue the debt in court has expired due to the passing of time. This time limit varies from state to state, but is usually six years (three years in the Northern Territory) from the date the debt was last acknowledged by the debtor (for example, by making a payment).

⁷⁰ For example, provision 2.8 of the Credit Reporting Code of Conduct prohibits the listing of statute-barred debts.

⁷¹ Alternatively, the debtor has entered into a Part IX debt agreement or a Part X personal insolvency agreement under the Bankruptcy Act: see part 2, section 15 of this guideline.

- [c] Representing that legal action will or may be taken when a debt is statute-barred may be misleading and deceptive. Such representation may also be unconscionable when the debtor has not had the opportunity to obtain legal advice.
- [d] The Credit Reporting Code of Conduct prohibits the listing of statute-barred debts.⁷²

CASE STUDY

An unemployed mother of a deaf, dependent child was cold-called by a collector who questioned her about her personal and financial circumstances. The collector implied that legal proceedings may be instituted if no payment was made on a debt of \$10 000 that, unknown to the debtor, was statute-barred. The court found the collector's conduct to be unconscionable and noted that the circumstances were sufficient to require the collector to establish that the transaction was fair, just and reasonable—which the collector did not do.

Collection House v Taylor [2004] VSC 49

21. Legal action and procedures

- [a] This section should be read in conjunction with part 2, sections 19 and 20 of this guideline.
- [b] Creditors and their agents have a right to pursue debts through the courts. However, in pursuing or threatening to pursue legal action you must comply with the consumer protection laws.
- [c] Do not make misrepresentations about the legal process. For instance, do not:
 - misrepresent the nature or purpose of correspondence. Ensure the layout, wording and design of documents (for example, letters of demand) are not likely to create the impression that they are court process or other court documents, or that they come from a solicitor's office, when this is not the case⁷³
 - suggest that telephone calls are recorded 'for training purposes' (and, by implication, only for such purposes) when those calls may also be used as evidence

⁷² See Office of the Privacy Commissioner website at: www.privacy.gov.au/publications/.

⁷³ See also s. 26(2)(a),(c),(f)(g) *Fair Trading Act 1992* (ACT); s. 21(2)(a),(b),(c)(f) *Fair Trading Act 1999* (Vic.); and s. 43(2)(c) *Fair Trading Act 1987* (SA). These provisions relate specifically to misrepresentation regarding documents, court process etc.

- misrepresent that failure to pay a debt (where no fraud is involved) is a criminal or police matter, or is likely to be referred to the police⁷⁴
 - misrepresent that you are a police officer, court official, or have some official capacity that you do not have to claim or enforce payment of a debt⁷⁵
 - state or imply that unsecured basic household items can be seized if the debtor is made bankrupt⁷⁶
 - state or imply that you have instructions to start legal proceedings when this is not intended, or you have received no such instructions
 - state or imply that legal action has already been taken, or judgment entered, when this is not case.
- [d] In certain circumstances the way legal action is threatened or employed can amount to unconscionable conduct or harassment. For instance, this may be the case if you start or escalate court action against a debtor when you have agreed not to, or when a payment arrangement is in place and is being complied with.
- [e] When you know or can reasonably obtain the debtor's current address, we recommend that you issue debt recovery proceedings in the jurisdiction where the debtor lives.⁷⁷ In some circumstances, limiting a debtor's ability to contest court proceedings by starting those proceedings in an inconvenient jurisdiction may constitute, or be part of a course of conduct constituting unconscionable conduct.

CASE STUDY

A collector breached misleading and deceptive conduct provisions by representing that they were about to sell a debtor's residence to obtain payment, when they had not started any legal proceedings at the time. They also breached these provisions by making baseless claims that they would have the debtor arrested by the police or the Fraud Squad.

ACCC v McCaskey [2000] FCR 1037.

74 See also s. 43(2)(a) *Fair Trading Act 1987* (SA) which specifically prohibits false representations that criminal or other proceedings will lie for non-payment of a debt.

75 See also s. 26(2)(d) *Fair Trading Act 1992* (ACT); s. 21(2)(d) *Fair Trading Act 1999* (Vic.); and s. 43(2)(b) *Fair Trading Act 1987* (SA).

76 Section 116 of the *Bankruptcy Act 1966* excludes these items from seizure by creditors.

77 Applications under the UCCC (for example, for repossession of security interests related to regulated contracts) need to be brought in the jurisdiction where the debtor resided at the time the contract was entered into: see s. 6 of the UCCC. However, this requirement does not apply to debt recovery proceedings as such.

22. Resolving debtor complaints and disputes

- [a] Complaints and disputes must not be ignored. Creditors and collectors must have effective internal processes in place for logging, assessing, and where appropriate, taking timely action in response to them. Staff need to be trained to identify complaints and disputes, and to ensure that established procedures are followed in dealing with them.⁷⁸
- [b] It is not acceptable to require that a complaint or dispute be in writing, and/or explicitly identified as such by the complainant/disputant, before it is considered or investigated.⁷⁹
- [c] Entities providing financial services to retail clients who are required under the *Corporations Act 2001* to have an Australian financial services licence (including banks, credit unions and building societies) must have an ASIC approved dispute resolution system, including internal dispute resolution [IDR] procedures.⁸⁰ ASIC requires that licensees' IDR procedures satisfy the essential elements of Australian Standard AS 4269:1995 and be appropriately documented.⁸¹ Complaints/disputes handling standards may also be imposed as a condition of membership of an industry code or external dispute resolution scheme.
- [d] Generally, we recommend that **all** creditors and collectors have in place internal complaint/dispute handling processes that are, at least, consistent with the Australian Standard AS 4269:1995 (or any Australian Standard that may subsequently replace it).

78 Creditors and collectors also need to have appropriate contractual and operational arrangements in place to facilitate providing information and documents required to resolve disputes: see part 2, section 10 of this guideline.

79 However, if the complaint is escalated to an external dispute resolution scheme (see part 2, section 23 of this guideline) it will generally need to be put in writing.

80 Sections 912A(1)(g) and 912A(2)(a), *Corporations Act 2001*.

81 See ASIC policy statement 165, at 165.10. As part of the ASIC requirements, licensees must also have a system for informing complainants about the availability and accessibility of the relevant external dispute resolution scheme to which a licensee belongs. See part 2, section 23 of this guideline.

23. The role of independent external dispute resolution schemes

- [a] Many creditor organisations (including telecommunications companies, utility suppliers and financial services businesses) belong to an independent external dispute resolution [EDR] scheme.⁸² Specialist collection and debt buy-out agencies, and other finance providers, may also decide to join a scheme. Belonging to an EDR scheme is a legal requirement for some creditors.⁸³
- [b] The ACCC and ASIC support the role played by EDR schemes in resolving consumer complaints and disputes when these are unable to be resolved through the creditor or collector's internal dispute resolution processes.
- [c] We urge creditors and collectors to ensure their systems and practices allow EDR in the debt collection area to work effectively. In particular:
- when applicable, creditors and collectors must advise debtors of an EDR scheme to which the debtor can take his or her unresolved dispute—ensuring this information is provided to debtors at the appropriate time is a requirement imposed on EDR scheme members, and may be stipulated under relevant laws or codes
 - collection activity relating to a dispute that has been referred to an EDR scheme must be suspended while the scheme considers the dispute—again, this is a requirement imposed on scheme members (including their agents)
 - a debt should not be sold, or passed to an external agent for collection, while a scheme is considering a dispute in relation to it
 - if a debt is inadvertently sold, the assignor/creditor should seek to retrieve the debt from the assignee, and/or seek to ensure that the assignee does not undertake collection activity or start legal proceedings until the scheme has resolved the dispute (and then only if liability is confirmed).

82 For a list of relevant ombudsman schemes, and for further information on EDR schemes, see the ACCC and ASIC publication entitled *Dealing with debt: your rights and responsibilities* (obtainable from either the ACCC or ASIC, contact details in appendix A of this guideline).

83 These include banks, building societies and credit unions providing financial services to retail clients who must belong to one or more ASIC approved EDR scheme as a requirement of their financial services licence: see ss. 912A(1)(g) and 912A(2)(b), *Corporations Act 2001*. ASIC policy statement PS 139 sets out ASIC requirements for scheme approval. A list of approved schemes can be obtained at [ww.asic.gov.au](http://www.asic.gov.au).

- [d] Note that a creditor may remain subject to the jurisdiction of an EDR scheme for a debt matter even though the creditor has sold or assigned the debt in question. This is likely to be the case when the complaint relates to the period before the sale or assignment of the debt.
- [e] The ACCC and ASIC encourage EDR schemes to consider this guideline when determining how the consumer protection laws we administer should be applied to particular debt collection-related matters.

Part 3: Commonwealth consumer protection laws

This section summarises key prohibitions and remedies under Commonwealth consumer protection laws applicable to collection activity. Relevant court decisions about the Trade Practices Act provisions also apply to equivalent ASIC Act provisions.⁸⁴

See appendix B for other statutory and common law obligations and remedies.

Prohibition of the use of physical force, undue harassment and coercion

Section 60 Trade Practices Act

A corporation shall not use physical force, undue harassment or coercion in connection with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

Section 12DJ ASIC Act

A person contravenes this subsection if:

- (a) the person uses physical force or undue harassment or coercion; and
- (b) the person uses such force, harassment or coercion in connection with the supply or possible supply of financial services to a consumer or the payment for financial services by a consumer.

84 *Cassidy v Saatchi & Saatchi Australia Pty Ltd* [2004] FCAFC 34.

Under s. 60 of the Trade Practices Act, and s. 12DJ of the ASIC Act, the use of:

- physical force
- undue harassment and/or
- coercion

to support a demand for payment for goods or services/financial services is deemed unacceptable and is prohibited. These provisions are not limited to conduct directed at a debtor. They also apply to the collector's conduct towards a third party (for instance, a family member).

The terms 'physical force', 'harassment' and 'coercion' are not defined in the law. They should be understood in the way they are ordinarily used and defined.

Physical force

There is no concept of 'due' or 'undue' physical force under s. 60 of the Trade Practices Act, or s. 12DJ of the ASIC Act. Any use of any violence or physical force is prohibited. The use of force may also be a criminal offence under state and territory criminal law.

In *ACCC v Davis* and *ACCC v Capalaba*⁸⁵ the court found that, in pinning a debtor to the ground while the debtor's vehicle was removed from the debtor's premises, the respondent corporation through its agents breached s. 60 of the Trade Practices Act. The fact that the collector had a contractual right to seize the vehicle under a mortgage over the vehicle did not permit the use of physical force to overcome the debtor's resistance to the seizure.

Undue harassment

Undue harassment may occur when repeated approaches are made or repeated pressure is applied to a debtor, going beyond what is acceptable or reasonable. While the harassment must be 'undue', there is no requirement that the conduct must involve the threat of an illegal act.⁸⁶

85 *ACCC v Davis* [2003] FCA 1227. *ACCC v Capalaba Pty Ltd & Others* [2003] FCA 1226.

86 *Campbell v Metway Leasing Ltd* (1998) ATPR 41-630.

In *ACCC v Maritime Union of Australia*,⁸⁷ Justice Hill explained the meaning of the term **undue harassment** as follows:

The word harassment means in the present context persistent disturbance or torment. In the case of a person employed to recover money owing to others ... it can extend to cases where there are frequent unwelcome approaches requesting payment of a debt. However, such unwelcome approaches would not constitute undue harassment, at least where the demands made are legitimate and reasonably made. On the other hand where the frequency, nature or content of such communications is such that they are calculated to intimidate or demoralise, tire out or exhaust a debtor, rather than merely convey the demand for recovery, the conduct will constitute undue harassment. ... Generally it can be said that a person will be harassed by another when the former is troubled repeatedly by the latter. The reasonableness of the conduct will be relevant to whether what is harassment constitutes undue harassment.

Coercion

Judicial authority indicates that s. 60 of the Trade Practices Act and s. 12DJ of the ASIC Act prohibit any 'coercion', not just 'undue coercion'.⁸⁸ The concept of **coercion** does not involve the element of repetition usually involved in the concept of **undue harassment**. Coercion is said to 'carr[y] connotations of force or compulsion or threats of force or compulsion negating choice or freedom to act'.⁸⁹ Coercion may take many forms, and is not limited to using or threatening physical force.

Prohibition of misleading and deceptive conduct

Section 52(1) Trade Practices Act

A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

87 *ACCC v The Maritime Union of Australia* [2001] FCA 1549 at ¶ [60], Justice Hill.

88 *ibid.* at ¶ [61]–[63].

89 *ibid.* at ¶ [63].

Section 12DA(1) ASIC Act

A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

These provisions apply widely to trade or commerce activities, of which collectors' activities are but one aspect.

The above sections prohibit a collector from making any statement or engaging in any other conduct (for example, impersonating someone, or using a false letterhead or document) that is misleading or deceptive or is likely to mislead or deceive. The terms 'misleading' and 'deceptive' are not defined in the statute and should be understood in the way they are ordinarily used and defined.

Collectors may breach this prohibition even though they do not intend to mislead—it is enough that the misrepresentation is likely to have this effect on the type or class of person to whom the conduct is directed. In some circumstances, a collector may need to positively disclose information to avoid creating a misleading impression.

In *ACCC v McCaskey*⁹⁰ the court accepted that a collector breached s. 52 of the Trade Practices Act by conduct towards debtors including representations that:

- the agent was about to take immediate steps to sell a debtor's residence to obtain payment of a debt owed when no legal proceedings to recover the debt had been started at the time
- the agent would arrange to have the debtor arrested by the police or the fraud squad if the debtor did not make immediate payment of the debt, when there was no reasonable basis on which the collector could have taken that action.

The ACCC's publication, *Advertising and selling* (December 2004), discusses misleading and deceptive conduct (as well as other issues) in more detail. The principles discussed there also generally apply to the prohibition against misleading or deceptive conduct in the ASIC Act. For a copy of this booklet, visit www.accc.gov.au/publications or call the ACCC Infocentre on 1300 302 502.

⁹⁰ *ACCC v McCaskey* [2000] FCA 1037.

Prohibition of unconscionable conduct

Trade Practices Act, Part IVA—unconscionable conduct (summary only)

Part IVA contains three provisions that prohibit unconscionable conduct:

- (a) s. 51AA (unconscionable conduct within the meaning of the unwritten law of the states and territories)
- (b) s. 51AB (unconscionable conduct)
- (c) s. 51AC (unconscionable conduct in business transactions).

Section 51AB Trade Practices Act (unconscionable conduct)

This section prohibits a corporation ‘in trade or commerce, in connection with the supply or possible supply of goods or services to a person’, from engaging in ‘conduct that is, in all the circumstances, unconscionable’:
s. 51AB(1).

Without limiting the matters a court can consider in determining whether s. 51AB(1) has been contravened, the court can consider:

- (a) the relative strengths of the bargaining positions of the corporation and the consumer
- (b) whether, as a result of the conduct, the consumer was required to comply with conditions that were not reasonably necessary to protect the corporation’s legitimate interests
- (c) whether the consumer was able to understand documents relating to the supply or possible supply of the goods or services
- (d) whether undue influence or pressure was exerted on, or unfair tactics were used against, the consumer or a person acting on behalf of the consumer
- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods from another trader.

Section 51AB is limited to unconscionable conduct regarding the supply or possible supply of goods or services of a kind ‘ordinarily acquired for personal, domestic or household use or consumption’ (s. 51AB(5)).

Part 2, Div. 2, subdiv. C, ASIC Act—unconscionable conduct (summary only)

This subdivision is based on, and is substantially similar to, Part IVA of the Trade Practices Act but is limited to the supply or possible supply of 'financial services'. Unlike Part IVA of the Trade Practices Act, the subdivision applies to unconscionable conduct of 'persons' generally and is not limited to the conduct of 'corporations'.

These provisions apply widely to trade or commerce activities, of which collecting activities are but one aspect.

Collectors risk breaching this prohibition particularly when they exert undue influence or pressure on, or unfair tactics against, a debtor who is specially disadvantaged or vulnerable.

In *Collection House v Taylor*⁹¹ it was found that a commercial agent had acted unconscionably in trying to recover a debt that, unknown to the debtor, was statute-barred. It was also noted that the factual circumstances were sufficient to require the collector to establish that the transaction was fair, just and reasonable.

The debtor was an unemployed mother with a deaf, dependent child, who had originally defaulted on repayments for a car loan. The car was repossessed and sold. The residual debt was purchased by the commercial agent a number of years later, by which time accumulated interest had increased the amount owing to more than \$10 000.

After being contacted by an employee of the commercial agent and told that legal action may be taken if a satisfactory arrangement could not be reached, the debtor agreed to pay \$5000 to finalise the debt, of which \$4500 was immediately charged to her credit card. The court upheld the original decision that the agent through its employee had acted unconscionably. The court noted that:

... the fact of someone from a firm of lawyers 'cold-calling' a woman of the respondent's socio-economic standing at home at 6.30 in the evening, and interrogating her as to her personal and financial circumstances while insinuating that in the absence of her agreement to pay legal proceedings may be instituted, is capable of constituting pressure of a very high order.

In *ACCC v Esanda Finance Corporation Ltd*⁹² the court found that the creditor had

91 *Collection House v Taylor* [2004] VSC 49.

acted unconscionably by failing to stop efforts to repossess a car subject to a chattel mortgage when there was reasonable cause to understand that there would be a physical confrontation if they continued in their attempt. Other factors considered in the court's declaration of unconscionability include the creditor sending the debtor a notice implying that they would not or could not lawfully repossess the car without a court order, and then repossessing the vehicle without such an order, as well as the fact that Esanda's agents entered the debtor's residence by jumping a gate and opening a garage door from the inside.

See the ACCC's *Guide to unconscionable conduct* for more about this area of law. The principles discussed in this guide also generally apply to the ASIC Act. For a copy of this guide, visit www.accc.gov.au/publications or call the ACCC Infocentre on 1300 302 502.

Enforcement and remedies for breaching the Trade Practices Act or the ASIC Act

Fines

A collector who breaches the harassment and coercion provisions is guilty of an offence punishable on conviction by a fine of up to:

- \$220 000 (in the case of individuals)
- \$1 100 000 (in the case of corporations).⁹³

These penalties also apply when a collector is convicted of knowingly making false or misleading representations.⁹⁴ Certain defences may apply regarding these breaches.⁹⁵

Civil orders

Apart from criminal sanctions, ASIC or the ACCC can also apply for civil orders against a collector, including:

- injunctions against future conduct⁹⁶
- non-punitive orders⁹⁷
- punitive orders requiring adverse publicity.⁹⁸

Damages or injunction

Finally, a debtor or third party who suffers loss or damage as a result of a collector's breach of the unconscionable conduct⁹⁹, misleading or deceptive conduct¹⁰⁰, harassment and coercion, or other provisions of the ASIC Act and Trade Practices Act, can recover the amount of their loss by an action for damages under these Acts.¹⁰¹ A debtor or third party can also seek injunctive relief.¹⁰²

⁹³ Section 12GB(1) of the ASIC Act and ss. 6(6) and 75AZN of the Trade Practices Act. Penalties are denominated in 'penalty units' in the legislation (10 000 in the case of corporations and 2000 in the case of individuals), with 1 penalty unit being equal to \$110 at the time of publication. The value of penalty units can change over time.

⁹⁴ Section 12 DB, ASIC Act; s. 75AZC Trade Practices Act.

⁹⁵ Section 12GI, ASIC Act; s. 85 Trade Practices Act.

⁹⁶ Section 12GD, ASIC Act; s. 80 of the Trade Practices Act.

⁹⁷ Section 12GLA, ASIC Act; s. 86C of the Trade Practices Act.

⁹⁸ Section 12 GLB, ASIC Act; s. 86D of the Trade Practices Act.

⁹⁹ Sections 12CA–CC, ASIC Act; ss. 51AA–AC, Trade Practices Act.

¹⁰⁰ Section 12DA, ASIC Act; s. 52, Trade Practices Act.

¹⁰¹ Section 12GF, ASIC Act; ss. 82 and 87(2)(d), Trade Practices Act.

¹⁰² Section 12GD, ASIC Act; s. 80, Trade Practices Act.

Appendix A: ACCC and ASIC— debt collection roles and contact details

Australian Competition and Consumer Commission (ACCC)

The ACCC is responsible for dealing with misconduct associated with debt collection activity when the debt does not relate to providing a financial service. This includes debts:

- for providing telephone or other utility services
- for the services of trades and professional people

when a retailer does not require immediate payment for a product (but not when the customer enters into a finance arrangement as that will be ASIC's responsibility).

The ACCC's responsibilities also include debts arising from deferred payment (for example, a customer who is billed monthly or given an extension of time to pay).

The ACCC's responsibilities cover any alleged undue harassment, coercion or unconscionable conduct regarding the collection of the debt and any misrepresentations made about the debt. They extend to debts relating to goods and non-financial services which have been assigned or sold to a third party (for example, a debt buy-out company).

The ACCC is also responsible for any misleading or deceptive conduct relating to the actual good or service.

ACCC contact details

For matters relating to the types of debt given above, contact the ACCC.

For all business and consumer inquiries:

ACCC Infocentre: 1300 302 502

ACCC website: www.accc.gov.au

National Office

PO Box 1199

DICKSON ACT 2602

Tel: (02) 6243 1111

Fax: (02) 6243 1199

Australian Securities and Investments Commission (ASIC)

ASIC is responsible for dealing with misconduct associated with debt collection activity when the debt relates to providing a financial service. This includes debts relating to:

- credit card accounts
- home loans, personal loans and loans sourced through retailers (for example, for motor vehicles, household goods and other purposes)
- fees for providing financial advice, insurance and other financial products and services.

ASIC's responsibility covers any alleged undue harassment, coercion or unconscionable conduct regarding the collection of the debt and any misrepresentations made about the debt. It extends to debts relating to a financial service which have been assigned or sold to a third party (for example, a debt buy-out company).

If there is misleading or deceptive conduct relating to the actual good or service (such as the car or the appliance) and not the debt, this will be referred to the ACCC.

ASIC contact details

For matters relating to the types of debt given above, contact ASIC.

ASIC's Infoline: 1300 300 630 or
infoline@asic.gov.au

ASIC's consumer website: www.fido.gov.au.

Go to **How to complain** to make a complaint on line.

Address for written complaints:

ASIC Complaints
Australian Securities and Investments Commission
PO Box 9149
TRARALGON VIC 3844
FAX: (03) 5177 3749

Overlapping areas

In some situations, a complaint may relate to a range of debts, including both debts for financial services and debts for a good or non-financial service. The ACCC and ASIC have agreed to coordinate any action when debt collection conduct involves such overlapping jurisdiction.

For more information about the respective responsibilities of ASIC and the ACCC over debt collection, see the joint brochure *Complaints about debt collection activity—the responsibilities of Commonwealth agencies*. For a copy, contact either the ACCC or ASIC using the phone numbers provided above, or visit the ACCC or ASIC website.

Appendix B: Other statutory and common law obligations and remedies

Apart from the Commonwealth consumer protection laws (See part 3 of this guide), there are a range of other statutory and common law obligations and remedies that potentially affect collectors' operations.¹⁰³ These include (but are not limited to) the following listed below.

Because this guide does not have legal force, read it subject to the rights and obligations imposed by the following and any other applicable laws and/or mandatory codes to the extent of any inconsistency.

State and territory fair trading laws

These laws¹⁰⁴, based on the *Trade Practices Act 1974*, contain similar misconduct prohibitions to those set out in the Commonwealth legislation. However, the harassment and coercion provisions of the *Fair Trading Act 1999* (Vic.) and *Fair Trading Act 1992* (ACT) also deem that certain specified conduct constitutes undue harassment and coercion.¹⁰⁵ Consumer Affairs Victoria has also published *Guidelines for debt collection* under the *Victorian Fair Trading Act (1999)*.¹⁰⁶ There may be other state and territory laws relating to consumer protection that are relevant to the collection context as well.

¹⁰³ It should be noted that these laws apply to activities within their respective jurisdictions, even if the collector is physically located in another state, territory or country.

¹⁰⁴ *Fair Trading Act 1987* (ACT), *Fair Trading Act 1987* (NSW), *Consumer Affairs and Fair Trading Act 1990* (NT), *Fair Trading Act 1989* (Qld), *Fair Trading Act 1987* (SA), *Fair Trading Act 1990* (Tas.), *Fair Trading Act 1999* (Vic.), *Fair Trading Act 1987* (WA).

¹⁰⁵ See s. 21(2), *Fair Trading Act* (Vic.) and s. 26(2), *Fair Trading Act* (ACT).

¹⁰⁶ Available at www.consumer.vic.gov.au.

State and territory licensing of collectors

Most state and territory jurisdictions have occupational licensing requirements applying to a range of persons involved in collection.¹⁰⁷ These laws impose certain obligations on licensees, and set out grounds on which the relevant authority can refuse to grant or cancel a licence. In Queensland, licensed commercial agents are subject to a mandatory code of conduct, the Commercial Agency Practice Code of Conduct.¹⁰⁸ In other jurisdictions conduct requirements may be imposed under the legislation itself.¹⁰⁹

The Uniform Consumer Credit Code [UCCC]

Uniform state and territory legislation regulates consumer credit contracts and related transactions (including mortgages, guarantees, consumer leases and credit-related insurance). It imposes pre-contractual, contractual, and post-contractual form and disclosure obligations on credit providers, as well as some limitations on the contractual arrangements that may be entered into. It also regulates the termination and enforcement of contracts and related securities. Some important aspects of the UCCC in the context of debt collection include its provisions on: obtaining account information and documents¹¹⁰; varying repayments on grounds of hardship¹¹¹; and enforcement of credit contracts, mortgages and guarantees.¹¹²

State and territory unauthorised documents laws

Unauthorised documents acts in each state and territory¹¹³ make it an offence to design collection letters of demand in a way that makes them look like court documents.

107 *Commercial Agents and Private Inquiry Agents Act 2004* (NSW), *Commercial and Private Agents Licensing Act 2002* (NT), *Property Agents and Motor Dealers Act 2000* (Qld), *Security and Investigation Agents Act 1995* (SA), *Security and Investigation Agents Act 2002* (Tas.), *Private Agents Act 1966* (Vic.), *Debt Collectors Licensing Act 1964* (WA).

108 *Property Agents and Motor Dealers (Commercial Agency Practice Code of Conduct) Regulation 2001* (Qld).

109 For example, s. 25 (Harassment), *Commercial Agents and Private Inquiry Agents Act 2004* (NSW).

110 See part 2, section 10 of this guideline.

111 See part 2, section 13 of this guideline.

112 See Part 5 of the UCCC ('Ending and enforcing credit contracts, mortgages and guarantees').

113 *City of Canberra Arms Act 1932* (ACT), *Unauthorised Documents Act 1922* (NSW), *Flag and Emblem Act 1985* (NT), *Badge, Arms, Floral and other Emblems of Queensland Act 1959* (Qld), *Unauthorised Documents Act 1916* (SA), *Unauthorised Documents Act 1986* (Tas.), *Unauthorised Documents Act 1958* (Vic.), *Unauthorised Documents Act 1961* (WA).

State and territory limitation of actions laws

Each state and territory sets limitation periods on debt recovery actions.¹¹⁴ These generally bar a remedy to the creditor if a defence pleading expiration of the limitation period is filed. In the case of simple contracts (which include the majority of debts referred for collection) the limitation period is normally six years. (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. Limitation Acts also regulate the enforcement of court judgments.

Bankruptcy laws

Under the *Bankruptcy Act 1966*, administered by the Insolvency and Trustee Service Australia, on bankruptcy or acceptance of a Part IX debt agreement or a Part X personal insolvency agreement, a bankrupt/debtor is released from their financial obligations for provable debts. Most unsecured debts will be provable. Further action to recover provable debts directly from the bankrupt/debtor is not permitted—any further recovery must be through the scheme of administration under the Bankruptcy Act.

Privacy laws

Part IIIA of the *Privacy Act 1988 (Cwlth)* governs the handling of credit reports and other credit-worthiness information about individuals by credit reporting agencies and credit providers. Some of the requirements include what information can be stored on a credit report, how long such information can be included, and to whom and under what circumstances access is allowed.

The National Privacy Principles also regulate certain private sector entities in their dealings with personal information. These provisions of the Privacy Act, where applicable, regulate the collection, use and disclosure of personal information, and impose obligations on organisations to maintain accurate, complete and up-to-date records, and allow access by the individual concerned to the information held about them.

¹¹⁴ *Limitation Act 1985* (ACT), *Limitation Act 1969* (NSW), *Limitation Act 1981* (NT), *Limitation of Actions Act 1974* (Qld), *Limitation of Actions Act 1936* (SA), *Limitation Act 1974* (Tas.), *Limitation of Actions Act 1958* (Vic.), *Limitation Act 1935* (WA).

The Privacy Commissioner has issued a legally binding Credit Reporting Code of Conduct, and from time to time, the Privacy Commissioner also issues determinations that may affect the collection industry.

Tort law

Collectors who engage in extreme conduct may expose themselves to civil action in tort by a debtor. Depending on the circumstances, action for trespass, assault, wilful infliction of mental injury, nervous shock and defamation (among others) may apply.

Criminal law

Collectors who engage in extreme conduct may be charged with criminal offences including assault and demanding with menaces. A collector who refuses to leave a person's property may also be charged with trespass.

Other obligations

Collectors who are unsure of their obligations under any of the above-mentioned laws, mandatory codes and other arrangements should seek more information from the relevant regulator and/or obtain legal advice.

You should also be aware of the requirements of any voluntary code of conduct or similar instrument to which you subscribe and of the relevant rules of any trade association or professional body to which you belong.

Appendix C: Glossary

Agent: for the purposes of this guideline, a person who has the express, implied or ostensible authority to undertake collection activity on behalf of a creditor in circumstances where a debt has not been sold or assigned.

Assigned debt: for the purposes of this guideline, any debt which has been sold, assigned, or factored by a creditor, or for which a creditor has in any other way subrogated their rights as a creditor.

Assignee: for the purposes of this guideline, a person undertaking collection activity after the sale, assignment or factoring of a debt, or the subrogation of rights by a creditor to this person.

Authorised representative: a person such as a financial counsellor, solicitor, financial advisor, carer, trustee or guardian who has been authorised by the debtor to act on behalf of the debtor.

Bankrupt: a person who has been declared bankrupt under the provisions of the *Bankruptcy Act 1966* and has not been discharged from the bankruptcy.

Collector: a person collecting a debt in the course of a business. It includes creditors, independent collection agencies, collections departments within businesses, debt buy-out companies, assignees, agents, lawyers, government bodies engaged in trade or commerce, court officials, and other persons¹¹⁵ collecting on behalf of others.

Communicate: unless otherwise specified, includes communication by telephone, mobile telephone, fax, email, letter and in person.

Complaint: for the purposes of this guideline, this term is generally used for issues of collector or creditor conduct (as distinct from issues of debtor liability: see '**Dispute**' on p. 57).

¹¹⁵ The Trade Practices Act applies to corporations or individuals when they are acting as agents of a principal that is a corporation.

Credit listing: for the purposes of this guideline, the listing of an unpaid debt on a person's credit report.

Creditor: a person to whom a debt is incurred. In this guideline, the term continues to apply to the person to whom the debt is incurred despite the sale, assignment, factoring or outsourcing of the debt.

Credit report: any record or information, whether in a written, oral or other form, that:

- is being or has been prepared by a credit reporting agency
- has any bearing on an individual's:
 - eligibility to be provided with credit or
 - history in relation to credit or
 - capacity to repay credit
- is used, has been used or has the capacity to be used for the purpose of serving as a factor in establishing an individual's eligibility for credit.¹¹⁶

Debt: an amount of money owed. For the purposes of this guideline, it includes an alleged debt.

Debtor: a natural person obligated or allegedly obligated to pay a debt.

Dispute: for the purposes of this guideline, this term is generally used in relation to issues of debtor liability (as distinct from issues of collector or creditor conduct: see 'Complaint').

Judgment debt:¹¹⁷ means a debt confirmed by an order or judgment of a court.

Reasonableness: is assessed according to an objective standard, taking into account all relevant circumstances.

Security interest: an interest in or a power over goods or land (whether arising by or under an instrument or transaction or arising on the execution of a warrant issued under the relevant state or territory legislation) which secures payment of a debt.

Statute-barred debt: a debt for which the debtor is entitled to claim an absolute defence to legal proceedings to collect the debt due to the passage of time (as set out in the relevant statute of limitations).¹¹⁸

¹¹⁶ Section 6(1), *Privacy Act 1988*.

¹¹⁷ These may go by different names in different states. For example, in Queensland, judgment debts are referred to as Money Orders.

¹¹⁸ See appendix B, 'Limitation of actions laws'.

Third party: any person other than the debtor, but does not include a debtor's legal representative, trustee, or other authorised representative. Nor does it include a related entity of the collector.

Undue harassment: please refer to the section entitled 'Prohibition of the use of physical force, undue harassment and coercion' in part 3 of this guideline.

ANNEXURE B

CODE OF PRACTICE

'QUALIFICATION SCHEDULE'

Disclaimer: Please note that the following courses are approved by the Australian Government under the AQTF ANTA/DEST system as part of the Australian Qualifications Framework (AQF) and not created by the AIPD.

A) Certified Practicing Investigator / Certified Practicing Mercantile Agent

INVESTIGATIONS

i) Certificate III in Investigative Services - National Course Code PRS30303

(Replaces Certificate IV in Investigative Services Course Code PRS 40498 and Certificate III Code PRS30598)

(NOTE: THIS COURSE IS ALSO NOW MANDATORY UNDER MOST STATE LICENSING REQUIREMENTS FOR PRIVATE INVESTIGATORS)

Nationally accredited course under the Australian Quality Training Framework (AQTF)

MERCANTILE ACTIVITIES

i) Certificate III in Financial Services (Mercantile) - National Course Code FNS30404

Including Establish, manage and administer **Trust Accounts Unit** FNSCONV503A

(NOTE: THIS COURSE IS ALSO NOW MANDATORY UNDER SOME STATE LICENSING REQUIREMENTS FOR MERCANTILE / COMMERCIAL AGENTS)

Nationally accredited course under the Australian Quality Training Framework (AQTF)

ANNEXURE B - CODE OF PRACTICE - 'SUGGESTED QUALIFICATION SCHEDULE' (Page 2)

Government Activities

To conduct investigations and/or fraud control activities for Government Departments or Agencies, Investigators, whether as an employee or external contractor, (under Commonwealth Government gazetted guidelines & PSP04), the person is required to hold, in addition to the above, also the **following formal course qualifications**, Subject to Activities: -

ii) Certificate IV – Government - Investigations - National Code PSP41504

and/or

iii) Certificate IV – Government – Fraud Control - National Code PSP40604

Note: (The now superseded course Certificate IV in Government Fraud Control – Investigations is acceptable in lieu of the above courses, unless stipulated otherwise by a government department/agency)

All the above are Nationally Accredited modules of Courses under the Australian Qualifications Framework

(NOTE: If an external contract investigator conducts government investigation work, they require the above government qualification **AS WELL As** the Certificate III in Investigative Services PRS30303)

In addition to one or both of the Investigative courses identified under Section (A) i), ii), it is recommended that **Certified Practising Investigators** should hold minimum educational qualifications in Occupational Health & Safety to be able to conduct their professional activities, as follows: -

2) OCCUPATIONAL HEALTH & SAFETY

Surveillance Investigators & Commercial Agents

Short Courses (Any one of the following National Modules)

- **Monitor –A- Safe Workplace BSBCMN411A - unit of BSB40401 (recommended)**
- **Maintain Workplace Safety BSBCMN 311A - unit of BSB30504**
- **Ensure A Safe Workplace BSBMGT505A – a unit of BSB51004**

All the above are Nationally Accredited modules of Courses under the Australian Quality Training Framework (AQTF)

ANNEXURE B - CODE OF PRACTICE - 'SUGGESTED QUALIFICATION SCHEDULE' (Page 3)

Factual Investigators

(Factual Investigators, safety officers / consultants that carry out workplace investigations, such as workers compensation, OH&S incident investigations, and public liability / common law claims, are required to hold any one of the following full qualifications **in addition to** the PRS30303 investigative qualification)

- **Certificate IV in Occupational Health and Safety (National Code BSB41604) (Latest Course)**
Or the now superseded courses -
- Certificate IV - Workplace Safety (National Code 12174)
- Certificate IV in Occupational Health and Safety (1892)

Nationally accredited course under the Australian Quality Training Framework (AQTF)

SPECIAL NOTE:

We suggest that as these are Nationally Accredited OH&S courses/units, they are deemed very useful as current 'best practice' applications in addition to any other OH&S requirements of the Legislation in the relevant State or Territory.

B) Investigation Firm / Mercantile Agent Firm (Subject to Activities)

Director/s must hold a Investigator's Licence or Mercantile Agent's Licence or other License/s as required by current licensing regimes in Australia the State or Territory Legislation and also: the following:-

INVESTIGATIONS

- i) **Certificate III - Investigative Services National Course Code PRS30303**
(previous Certificate IV PRS40498 is accepted)

MERCANTILE ACTIVITIES

- ii) **Certificate III in Financial Services (Mercantile) - National Course Code FNS30404**

Including Establish, manage and administer **Trust Accounts Unit** FNSSCONV503A

ANNEXURE B - CODE OF PRACTICE - 'SUGGESTED QUALIFICATION SCHEDULE (Page 4)

- and if conducting or wishing to tender for or conduct investigations/mercantile activities for Government Departments and Agencies, in addition to the abovementioned course, acquisition of the following course/s are required in order to comply with the Commonwealth guidelines and DEST - PSP04, Subject to Activities): -

ii) Certificate IV – Government - Investigations (National Code PSP41504)

and/or

iii) Certificate IV – Government – Fraud Control National Code PSP40604

Note: (The now superseded course Certificate IV in Government Fraud Control – Investigations is acceptable in lieu of the above courses unless stipulated otherwise by a government department/agency).

All the above are Nationally Accredited modules of Courses under the Australian Quality Training Framework (AQTF)

As a due diligence application we suggest the Firm Directors and/or Managers should complete one of the following, in addition to the above Course/s, if employing/contracting field operators. Note that under WorkCover NSW guidelines as from 1st December 2004, that this is the required benchmark in OH&S education for ANYONE involved in teaching any aspect of OH&S.

OCCUPATIONAL HEALTH & SAFETY

(Any one of the following Courses)

- **Certificate IV in Occupational Health and Safety (National Code BSB 41604)** (Latest Course) or the following now superseded national qualifications are acceptable
- Certificate IV - Workplace Safety (National Code 12174)
- Certificate IV in Occupational Health and Safety (1892)

SPECIFIC TRAINING REQUIREMENTS

Workplace Investigations

It is also required under the Code of Practice that **ALL** Certified Practising Investigators performing Factual Investigations involving the Workplace, OH&S, Workers Compensation, Public Liability/Common law claim investigations, hold one of the previous listed Certificate IV OH&S Courses in addition to their Investigations qualifications to ensure their competency to conduct workplace investigations. Conversely, any Safety Manager or Safety Consultant that conducts workplace investigations and involves the taking of statements and

ANNEXURE B - CODE OF PRACTICE - 'SUGGESTED QUALIFICATION SCHEDULE (Page 4)

gathering of evidence, requires a nationally accredited qualification in Investigations as well as nationally accredited OH&S qualifications. State based OH&S courses are not deemed sufficient qualification standards and do not have formal qualification level recognition. Most State endorsed OH&S courses utilise selected national units from the Business Package, but are not a formal qualification. Only a statement of attainment can be issued. This is not sufficient competency to conduct investigations of Workplace injuries or incidents. Safety Consultants that conduct OH&S investigations and prepare formal reports for a client, also require an Investigators Licence under the various State/Territory Licensing regimes, unless it can be shown they are actually employed by the firm requesting them to perform the investigation. Most OH&S consultants have now traversed their services into the area of Investigations of Workplace incidents, yet fail to hold the required national qualifications under the AQF. This in itself, ironically, is a breach of OH&S law. Similarly any government investigator conducting workplace investigations into workplace and OH&S incidents is required under OH&S law to meet these standards. The government investigator in this case is required to at least hold:-

1. Certificate IV in Government Investigation PSP41504;
2. Certificate IV in Occupational Health & Safety BSB41604;

in additional to a Government Workplace Inspections qualification and /or an OH&S Auditors qualification, if conducting actual OH&S Audits.

Trainers Requirements

It is also recommended that **ALL** Investigation / Commercial Agent Firm personnel involved in Tuition and Training activities of Investigators / Commercial Agents or Sub-Agents hold the National benchmark training qualification:

- **Certificate IV in Workplace Training & Assessment** (National Code TAA40104) (or the superseded **Certificate IV in Assessment & Workplace Training** (National Code BSZ40198))

And Also

- **Certificate IV in OH&S BSB41604**
 - (or holding the superseded **Certificate Workplace Safety Certificate IV - Workplace Safety** (National Code 12174), *or*
 - (or holding the superseded **Certificate IV in Occupational Health and Safety** (1892))

if training any module of OH&S in any course.

ANNEXURE B - CODE OF PRACTICE - 'SUGGESTED QUALIFICATION SCHEDULE (Page 4)

ADDITIONAL COURSES FOR SPECIALIST PORTFOLIO ENDORSEMENT

- CERTIFICATION

It is a requirement of this Code of Practice that in order to meet the professional expectations of clients & OH&S guidelines, Certified Practising Investigators be suitably qualified and competency to offer Specialist Investigative Services as identified in 'Certified Activities' Section of the COP. Unfortunately there are in many of these portfolios no nationally accredited qualification available and as such, Certification for a Specialised Portfolios of Practice shall be determined under the Certification Process and accreditation based on evidence of competency produced to the Industry Representative Body and the AIPD. CPD is then required to maintain a Practising Certificate and taking into consideration any new standards.

The AIPD intends to approve Specialist Portfolio Courses for the benefit of all industry members to access through their IRB and the AIPD. Courses however must be approved courses in order to gain CPD recognition.

The AIPD will periodically review the minimum standards of education requirements for specific Investigative and Mercantile activities to ensure the suitability of training programmes and that industry 'best practice' is maintained and that the principles of Continuous Improvement and Continuous Professional Development are fully embraced.

ANNEXURE C

‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’

Disclaimer: Please note that the AIPD and this Code of Practice in no way intends to fix the charges for which any CPI or CPMA or firm may charge or pay for investigative /commercial agent services. The following ‘*Suggested Fees*’ are only a suggested tool for CPI/CPMAs and contract field operator CPA/CPMAs to consider when applying ‘*best practice*’ principles to business activities. Further, as a tool to assist in the successful operation of their businesses taking into consideration their legal requirements under OH&S laws to be suitably trained and qualified as well as costs associated with ongoing training, CPD requirements, OH&S Management System; risk management controls in place; and requirements to comply with industrial relations laws, government licensing, as well as insurance policies in the area’s such as Professional Indemnity, Workers Compensation, Public Liability, general business insurances; Personnel Accident /Income Protection insurance. To also assist in making a CPI/CPMA’s professional business operations commercially viable, inclusive of these and other industry considerations.

The following Fees are, as stated, suggestive only and will be properly assessed by a qualified actuary or suitably qualified person for the purpose of reference by CPIs and CPMAs in Australia. A CPI/CPMA of course may apply fees and charges subject to their expertise and experience and by negotiation /agreement with their clients, however it is insisted that all parties take into consideration the associated laws and their responsibilities and ensure that they operate legally.

Rates for motor vehicle travelling we suggest should be determined in accordance with the relevant State recognised motoring body statistical data produced in their officially published annual reports. These statistics are normally based on the costs of owning and operating a standard vehicle such as a Holden Commodore sedan on Finance over a 3-year period and based on ‘average’ usage. The current rates appear to be from \$ 0.95 cents to \$1.00 per kilometre depending on your State or Territory. These rates will of course be regularly affected by the continual volatility of petrol /oil prices, insurance, cost of vehicles and other factors, and should be closely further considered when negotiating kilometre rates for the use of motor vehicles and of course any specialised vehicles. You are required to make your own enquiries to ensure your kilometre charges are adequate.

Note: These ‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’ do not relate to CPIs/CPMAs employed by an organisation.

‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’

PRINCIPAL CPI FIRMS

1

<u>PORTFOLIO</u>	<u>FACTUAL</u>	<u>SURVEILLANCE</u>
INSURANCE	Hourly Fee for Professional services including travelling time, reporting; report preparation	Hourly Fee for Professional services including travelling time, reporting; report preparation and video evidence review
Workers Compensation	\$ 100 per hour	\$ 95 per hour
• Common Law	\$ 110 per hour	\$ 95 per hour
• Psychological	\$ 120 per hour	\$ 95 per hour
Public Liability	\$ 100 per hour	\$ 95 per hour
Product Liability	\$ 120 per hour	\$ 95 per hour
CTP (Motor Vehicle Injury)	\$ 100 per hour	\$ 95 per hour
Income Protection / Casualty	\$ 100 per hour	\$ 95 per hour
Marine	\$ 120 per hour	\$ 95 per hour
Professional Indemnity	\$ 120 per hour	\$ 95 per hour
Fidelity Guarantee / Loss	\$ 120 per hour	\$ 95 per hour
Fire - Arson	\$ 120 per hour	\$ 95 per hour
M/V Theft & Property Loss	\$ 95 per hour	\$ 95 per hour
Intellectual Property & Trademark Investigations	\$ 120 per hour	\$ 100 per hour

KILOMETRES RATES
 IN ACCORDANCE WITH
 STATE MOTORING
 BODY STATISTICS

Est \$0.95 per Kilometre

‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’

PRINCIPAL CPI FIRMS

2

<u>PORTFOLIO</u>	<u>FACTUAL</u>	<u>SURVEILLANCE</u>
	Hourly Fee for Professional services including travelling time, reporting; report preparation	Hourly Fee for Professional services including travelling time, reporting; report preparation and video evidence review
Corporate Fraud (Internal)	\$ 150 per hour	\$ 120 per hour
Corporate Fraud	\$ 170 per hour	\$ 120 per hour
Corporate Fraud / Security	\$ 200 per hour	\$ 120 per hour
Forensic Accounting	\$ 200 per hour	\$ 110 per hour
Assets Tracing	\$ 180 per hour	\$ 110 per hour
OH&S Accident Investigation	\$ 120 per hour	-
Aviation Accident	\$ 220 per hour	-
Aviation Liability	\$ 220 per hour	\$ 120 per hour
Maritime Liability	\$ 220 per hour	\$ 120 per hour
Skip Tracing	\$ 100 per hour	\$ 95 per hour
Witness Location	\$ 90 per hour	\$ 95 per hour
Missing Persons	\$ 95 per hour	\$ 95 per hour
Background Investigations	\$ 100 per hour	\$ 95 per hour
Employment Vetting	\$ 100 per hour	\$ 95 per hour

KILOMETRES RATES
IN ACCORDANCE WITH
STATE MOTORING
BODY STATISTICS

Est \$0.95 per Kilometre

'SUGGESTED REASONABLE SCALE OF FEES SCHEDULE'

PRINCIPAL CPI FIRMS

3

<u>PORTFOLIO</u>	<u>FACTUAL</u>	<u>SURVEILLANCE</u>
	Hourly Fee for Professional services including travelling time, reporting; report preparation	Hourly Fee for Professional services including travelling time, reporting; report preparation and video evidence review
Family Law	\$ 100 per hour	\$ 95 per hour
Peace of Mind & Domestic	\$ 100 per hour	\$ 95 per hour
Consumer Investigations	\$ 95 per hour	\$ 95 per hour
Criminal Investigations	\$ 100 per hour	\$ 95 per hour
Director Liability / Impropriety	\$ 200 per hour	\$ 110 per hour
Government Surveillance	\$ 120 per hour	\$ 110 per hour
Government Fraud Control (External Activity)	\$ 120 per hour	\$ 110 per hour
Government Fraud (Internal Activity)	\$ 180 per hour	\$ 160 per hour
<u>Government Investigations</u> (Non Insurance matters as) Such as - Liquor Licensing, Social Security, Health, Crown Law, AGS, Fisheries, Immigration, CSA, Child Protection Investigations	\$ 120 per hour	\$ 100 per hour

KILOMETRES RATES
IN ACCORDANCE WITH
STATE MOTORING
BODY STATISTICS

Est \$0.95 per Kilometre

'SUGGESTED REASONABLE SCALE OF FEES SCHEDULE'

PRINCIPAL CPI FIRMS

4

<u>PORTFOLIO</u>	<u>FACTUAL</u>	<u>SURVEILLANCE</u>
	Hourly Fee for Professional services including travelling time, reporting; report preparation	Hourly Fee for Professional services including travelling time, reporting; report preparation and video evidence review
Child Protection / Child Care Incident Investigations	\$ 120 per hour	\$ 100 per hour
Information Technology & IT Fraud/Tracking & Identification Investigations	Variable but from \$ 180 per hour	
Engineering related Investigations	\$ 220 per hour	
De-Bugging TSCM	\$ 220 per hour	
Road Accident Site Reconstruction & Forensic Investigations	\$ 220 per hour	
Industrial Relations	\$ 120 per hour	
Covert Media Support		\$140 per hour

KILOMETRES RATES
 IN ACCORDANCE WITH
 STATE MOTORING
 BODY STATISTICS

Est \$0.95 per Kilometre

‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’

PRINCIPAL CPMA FIRMS

<u>PORTFOLIO</u>	Hourly Fee for Professional services including travelling time, reporting; report preparation	
Debt collection	\$85.00 per hour	
Skip Tracing	\$ 80.00 per hour	
Repossessions	First Attendance \$ 130.00 per service Repossession \$ 120.00 Surveillance \$ 95.00 per hour	
Process Serving	First Attendance \$120.00 Second Attendance \$95.00	
Urgent process serve	Per serve \$160.00	

KILOMETRES RATES
 IN ACCORDANCE WITH
 STATE MOTORING
 BODY STATISTICS

Est. \$0.95 per Kilometre

‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’

SUB-CONTRACT CPI S

1

<u>PORTFOLIO</u>	<u>FACTUAL</u>	<u>SURVEILLANCE</u>
INSURANCE	Hourly Fee for Professional services including travelling time, reporting; report preparation	Hourly Fee for Professional services including travelling time, reporting; report preparation and video evidence review
Workers Compensation	\$ 50 per hour	\$ 45 per hour
• Common Law	\$ 55 per hour	\$ 45 per hour
• Psychological	\$ 65 per hour	\$ 45 per hour
Public Liability	\$ 50 per hour	\$ 45 per hour
Product Liability	\$ 60 per hour	\$ 45 per hour
CTP (Motor Vehicle Injury)	\$ 50 per hour	\$ 45 per hour
Income Protection / Casualty	\$ 50 per hour	\$ 45 per hour
Marine	\$ 60 per hour	\$ 45 per hour
Professional Indemnity	\$ 60 per hour	\$ 45 per hour
Fidelity Guarantee / Loss	\$ 60 per hour	\$ 45 per hour
Fire - Arson	\$ 60 per hour	\$ 45 per hour
M/V Theft & Property Loss	\$ 45 per hour	\$ 45 per hour
Intellectual Property & Trademark Investigations	\$ 60 per hour	\$ 50 per hour

KILOMETRES RATES
 IN ACCORDANCE WITH
 STATE MOTORING
 BODY STATISTICS

Est \$0.95 per Kilometre

‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’

SUB-CONTRACT CPI s

2

<u>PORTFOLIO</u>	<u>FACTUAL</u>	<u>SURVEILLANCE</u>
	Hourly Fee for Professional services including travelling time, reporting; report preparation	Hourly Fee for Professional services including travelling time, reporting; report preparation and video evidence review
Corporate Fraud (Internal)	\$ 75 per hour	\$ 60 per hour
Corporate Fraud	\$ 80 per hour	\$ 60 per hour
Corporate Fraud / Security	\$ 90 per hour	\$ 60 per hour
Forensic Accounting	\$ 100 per hour	\$ 55 per hour
Assets Tracing	\$ 90 per hour	\$ 55 per hour
OH&S Accident Investigation	\$ 60 per hour	-
Aviation Accident	\$ 110 per hour	-
Aviation Liability	\$ 110 per hour	\$ 60 per hour
Maritime Liability	\$ 110 per hour	\$ 60 per hour
Skip Tracing	\$ 50 per hour	\$ 45 per hour
Witness Location	\$ 45 per hour	\$ 45 per hour
Missing Persons	\$ 45 per hour	\$ 45 per hour
Background Investigations	\$ 50 per hour	\$ 45 per hour
Employment Vetting	\$ 50 per hour	\$ 45 per hour

KILOMETRES RATES
 IN ACCORDANCE WITH
 STATE MOTORING
 BODY STATISTICS

Est \$0.95 per Kilometre

'SUGGESTED REASONABLE SCALE OF FEES SCHEDULE'

SUB-CONTRACT CPI s

3

<u>PORTFOLIO</u>	<u>FACTUAL</u> Hourly Fee for Professional services including travelling time, reporting; report preparation	<u>SURVEILLANCE</u> Hourly Fee for Professional services including travelling time, reporting; report preparation and video evidence review
Family Law	\$ 50 per hour	\$ 45 per hour
Peace of Mind & Domestic	\$ 50 per hour	\$ 45 per hour
Consumer Investigations	\$ 45 per hour	\$ 45 per hour
Criminal Investigations	\$ 45 per hour	\$ 45 per hour
Director Liability / Impropriety	\$ 100 per hour	\$ 50 per hour
Government Surveillance	\$ 60 per hour	\$ 50 per hour
Government Fraud Control (External Activity)	\$ 60 per hour	\$ 50 per hour
Government Fraud (Internal Activity)	\$ 90 per hour	\$ 80 per hour
<u>Government Investigations</u> (Non Insurance matters as) Such as - Liquor Licensing, Social Security, Health, Crown Law, AGS, Fisheries, Immigration, CSA, Child Protection Investigations	\$ 60 per hour	\$ 50 per hour

KILOMETRES RATES
IN ACCORDANCE WITH
STATE MOTORING
BODY STATISTICS

Est \$0.95 per Kilometre

‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’

SUB-CONTRACT CPI S

4

<u>PORTFOLIO</u>	<u>FACTUAL</u>	<u>SURVEILLANCE</u>
	Hourly Fee for Professional services including travelling time, reporting; report preparation	Hourly Fee for Professional services including travelling time, reporting; report preparation and video evidence review
Child Protection / Child Care Incident Investigations	\$ 60 per hour	\$ 50 per hour
Information Technology & IT Fraud/Tracking & Identification Investigations	Variable but from \$ 90 per hour	
Engineering related Investigations	\$ 110 per hour	
De-Bugging TSCM	\$ 100 per hour	
Road Accident Site Reconstruction & Forensic Investigations	\$ 110 per hour	
Industrial Relations	\$ 60 per hour	
Covert Media Support		\$ 70 per hour

KILOMETRES RATES
IN ACCORDANCE WITH
STATE MOTORING
BODY STATISTICS

Est \$0.95 per Kilometre

‘SUGGESTED REASONABLE SCALE OF FEES SCHEDULE’

SUB-CONTRACT CPMA_s

<u>PORTFOLIO</u>	Hourly Fee for Professional services including travelling time, reporting; report preparation	
Debt collection	\$ 40.00 per hour	
Skip Tracing	\$ 40.00 per hour	
Repossessions	First Attendance \$ 60.00 per service Repossession \$ 50.00 Surveillance \$ 45.00 per hour	
Process Serving	First Attendance \$ 70.00 Second Attendance \$ 60.00	
Urgent process serve	Per serve \$ 90.00	

KILOMETRES RATES
 IN ACCORDANCE WITH
 STATE MOTORING
 BODY STATISTICS

Est. \$0.95 per Kilometre

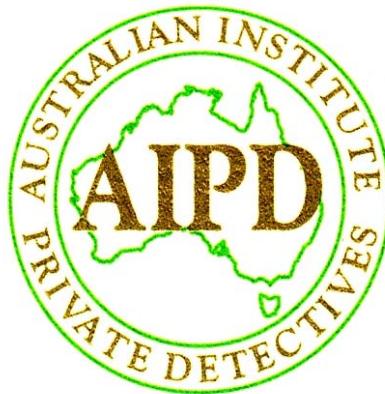
CPIs & CPMAs FEES & CHARGES

Rates to be paid to CPIs and CPMAs and sub-contracted CPIs and CPMAs can of course be negotiated, taking into consideration the abovestated as a guide only, however it is essentially a matter between the parties. It is however strongly recommended that fees & charges be assessed carefully, taking into consideration 'best practice' principles and applications to ensure and maintain professionalism services and include inherent expenses relating thereto and influencing physical factors that are required under Australia laws. Obviously Occupational Health & Safety, Superannuation, Workers Compensation, Professional Indemnity Insurance, Public Liability and business Insurances, Income Protection/Casualty Insurance, required training, government required training/licensing requirements, ongoing CPD training, CPI adjustments, motor vehicle costs - (particularly the ever increasing price of fuel), government charges, and living away expenses and any other directly relevant expenses.

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AIPD



CODE OF PRACTICE ASSOCIATED DOCUMENTS LIST

Doc.1cop – Key Review Amendments (1) - Code of Practice

Doc.2cop - Dispute Resolution Documents

STAGE 1

Doc.2cop [DRS.1A](#) - Code of Practice Dispute Resolution Documents
Dispute Resolution Scheme –
[Client Complaint Lodgment Form](#)

Doc.2cop [DRS.1B](#) - Code of Practice Dispute Resolution Documents
Dispute Resolution Scheme –
STAGE 1
[CPI / CPMA Complaint Lodgment Form](#)

STAGE 2

Doc.2cop [DRS.2A](#) - Code of Practice Dispute Resolution Documents
Dispute Resolution Scheme –
STAGE 2
[Client Complaint Lodgment Form](#)

Doc.2cop [DRS.2B](#) - Code of Practice Dispute Resolution Documents
Dispute Resolution Scheme Lodgment Form
STAGE 2
[CPI / CPMA Dispute Form](#)

Doc.2cop [DRS.2C/IRB](#) - Code of Practice Dispute Resolution Documents
Dispute Resolution Scheme Lodgment Form
STAGE 2
[IRB REQUEST FOR INFORMATION from a member CPI/CPMA](#)

CODE OF PRACTICE ASSOCIATED DOCUMENTS LIST

Doc.2cop - Dispute Resolution Documents

STAGE 3

Doc.2cop [DRS.3A/AIPD](#) - Code of Practice Dispute Resolution Documents

Dispute Resolution Scheme Lodgment Form

STAGE 3

Client DISPUTE Lodgment Form to AIPD

Doc.2cop [DRS.3B/IRB/Advice](#) - Code of Practice Dispute Resolution Documents

Dispute Resolution Scheme Lodgment Form

STAGE 3

IRB CASE DISPUTE ADVICE to AIPD

OTHER DISPUTE FORMS

Doc.2cop [DRS.4/IRB/Cert](#) - Code of Practice Dispute Resolution Documents

Dispute Resolution Scheme Lodgment Form

APPLICANT MEMBER CERTIFICATION REVIEW FORM

IRB REVIEW REQUEST ADVICE to AIPD (Members Only)

Doc.2cop [DRS.5/IRB/Cert](#) - Code of Practice Dispute Resolution Documents

Where a CPI /CPMA has a complaint against an industry body it may lodge a complaint to the AIPD.

Doc.2cop [DRS.6/ICF/general/CPI/CPMA](#) - Code of Practice Dispute Resolution Documents

Lodgment Form

Where a **CPI or CPMA** has a complaint relating to a client activity, practice, OH&S issue or any other industry practice issue, a complaint may be made to their industry body or directly to the AIPD.

CODE OF PRACTICE ASSOCIATED DOCUMENTS LIST

Doc.2cop - Dispute Resolution Documents

OTHER DISPUTE FORMS (con't)

Doc 2cop DRS.7-ICF/IRB/cpi/cpma - Code of Practice Dispute Resolution Documents Lodgment Form

Where an **Industry Representative Body (IRB)** has a complaint against an industry member, it may lodge a complaint to the AIPD.

Doc 2cop DRS.8/ICF/IRB/ind_complaint - Code of Practice Dispute Resolution Documents Lodgment Form

Where an **Industry Representative Body (IRB)** has a complaint against an industry body, or other industry party, or the AIPD itself. The complaint will then be managed under the DRS and CMC, and if appropriate, the full board of the AIPD.

Doc.3cop Doc.3cop OHS.1/CPI/CPMA/IRB
(For CPI/CPMA report of OH&S issue to IRB) (Members Only)

Doc.3cop OHS.2/AIPD
(For CPI/CPMA report of OH&S issue to AIPD) (Members Only)

Doc.4cop Application for an Industry Practicing Certificate www.aipd.com.au

Doc.5cop Industry Representative Body - Certification Accreditation Form www.aipd.com.au

CODE OF PRACTICE ASSOCIATED DOCUMENTS LIST

Doc.6cop **Nominated Responsible Person Form** (Registered CPIs/CPMA
(Members Only) www.aipd.com.au

Doc.7cop **Application for an Industry Association/ Body to secure CPD Training
Accreditation Provision under the Code of Practice Guidelines - CPD**
www.aipd.com.au

Doc.8cop **Designated Review Dates of Code of Practice** www.aipd.com.au

Doc.9cop **CPD Scheme Credit Guidelines** (Members Only) www.aipd.com.au

Doc.10cop **AIPD Practicing Certificate Renewal Form** (Members Only) www.aipd.com.au

Doc.11cop **Penalty Notice Provisions List** www.aipd.com.au
