

INSTITUTE OF **MERCANTILE AGENTS** LIMITED



**I M A**



# BEST PRACTICE GUIDE

Second Edition

**REPOSSESSIONS**



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## THE ASSOCIATION

The Institute of Mercantile Agents (IMA) formed in 1961 is the only national association in Australia for businesses and persons providing repossession services for the recovery of goods and chattels securing financial agreements between creditors and debtors.

The main objectives of the IMA are:

- to represent the professional interests of members;
- to foster a membership committed to the highest level of ethics, integrity and best business practice; and
- to advance members' interests nationally with government, business and the general community to provide an environment for their ongoing commercial success.

As the industry continues to develop, the IMA is proactively helping members to achieve and maintain best practice and will continue to engage with regulators and lobby on behalf of its members.

## THIS BEST PRACTICE GUIDE

The Institute of Mercantile Agents is the industry association nationally representing businesses and persons engaged in collections, investigations and field services in Australia.

Membership of the IMA is voluntary - businesses and persons join to demonstrate their commitment to the high standards adopted and promoted by the association.

This Best Practice Guide sets out best practice standards expected from members involved in the provision of repossession services and which debtors and businesses engaging with members should expect. Members agree to comply with this Best Practice Guide by virtue of membership.

This Best Practice Guide will enable debtors and businesses to address their situation involving the repossession of goods in confidence of fair treatment by members. To fulfil the potential of this Best Practice Guide those with debts outstanding for which repossession of goods is involved must cooperate with the businesses managing their debts including the repossession of security items so as to agree to reasonable solutions.

The IMA does not support any level of debt avoidance or delaying tactics from debtors, or any nuisance calls to our members through abuse or intentional misinterpretation of this Best Practice Guide or any other regulatory device.

This Best Practice Guide is intended as a helpful resource for debtors and creditors - compliance by members is intended to ensure best practice standards are maintained.

## LEGAL AND REGULATORY

The IMA expects members to maintain all required regulatory licences, registrations and authorisations and to adhere to all relevant legal and regulatory requirements, guidance and best practice including this Best Practice Guide.

This Best Practice Guide is divided into sections relating to likely activities of members.

Some sections apply to all members whilst others apply only to members undertaking the particular activity.

To attain best practice, members should comply with all the sections of this Best Practice Guide relevant to their specific business activities.

Care has been taken to include legislative detail and obligations current to the date of preparing this guide, however readers should always review current versions of specific legislation and regulations to ensure they access the latest requirements.

## THE INDUSTRY

Businesses providing repossession services in Australia use a variety of descriptors including: mercantile agents, field agents and repossession agents.

The industry in Australia in its early years comprised mainly of businesses acting as general practitioners to deliver a “one stop” range of services including debt collection, process serving, repossessions and skip tracing.

Over time, the expectations of clients on the industry matured and this coupled with increased regulatory compliance obligations led to the industry adjusting to the new environment by adopting specialisation of service delivery.

Within regional and country locations, it is still the case that businesses in the industry continue to act as general practitioners offering a range of services to their clients, however increasingly and especially in city locations, businesses are specialists in one aspect of activity.

## REPOSSESSION ASSIGNMENTS

The nature of the work associated with repossessions requires physical attendance at addresses and given the geographic spread of the Australian population, it is common practice that principal agencies when receiving instructions from creditors are routinely required to onforward those instructions to a secondary agency servicing the specific location to attend to the repossession task and report and invoice back to the principal agency for later reporting to the creditor.

The work involves acting on behalf of clients (mostly creditors being original credit providers or their intermediaries such as collection agencies and field agencies) to attend at an address to speak directly with a named individual or business debtor for the purpose of effecting repossession of a specific asset for which the creditor holds a security interest including items such as: real property, motor vehicles, commercial equipment, industrial equipment, office equipment, aircraft and marine equipment.

In the case of repossession of such security assets, the instructions to the principal agent are by a written Repossessions Authority and usually in the form *“collect by way of certified funds the amount of the arrears and enforcement costs on the specific account from the debtor and if the debtor is unable to make such payment effect repossession of the named security item”*.

If the arrears and costs are physically collected (eg cash or cheque), the repossession agent issues a receipt for the monies collected.

In the general course of their work, repossession agents do not drive or tow repossessed motor vehicles – instead their responsibility is to speak with the debtor in an attempt to obtain payment of the arrears and costs on the account; to obtain and make a suitable repayment arrangement; to offer hardship assistance when identified by referring the request to the creditor; and failing that to effect repossession including engaging an independent towing contractor to attend to secure the vehicle and tow it to the auction or storage facility as instructed by the creditor. Once the vehicle is towed away from the address, the repossession agent’s responsibility for the physical security of the security item ceases.

Upon repossession of a security item, the repossession agent is required to complete an inspection report for the creditor and to take photographs evidencing the condition of the security item before uploading the security to the tow truck.

In the event the debtor is no longer at the nominated address, the repossession agent is required to make enquiries of the current occupant at the address and/or neighbours to establish any forwarding address.

The repossession agent is required to make contemporaneous notes of attendances, any enquiries made and the outcome of their activities.

The majority of repossession assignments in Australia involving motor vehicle finance are handled by specialist agencies acting as approved Repossession Consortium Managers for the specific creditor.

Consortium Managers are parties to binding detailed contracts or service level agreements with the credit provider detailing the manner in which repossession assignments are to be handled. In turn, the Consortium Managers instruct their direct employees to attend to the specific repossession assignment or alternatively engage and supervise an independent repossession agent approved by the credit provider to attend to the specific assignment.

Upon completion of a repossession instruction, the agent provides a detailed report together with the inspection report and photographs to their client.

Repossession agents are remunerated on a “fee for service” basis - such fees do not include any commission based component. The repossession agent is paid a fee to attend the address which is not dependent upon being able to effect the repossession – the fees are generally then apportioned on a scale to account for the actual time engagement of the agent to either collect and process a payment or alternatively to engage and supervise the independent towing contractor’s removal of the asset from the address.

## **“PRINCIPAL & AGENT” RELATIONSHIP**

In repossession assignments, the subject debt (for which security is held) remains owned by the creditor, being the original credit provider. The principal agency acts strictly under an agency agreement (principal & agent) to the creditor.

Generally, there are service level agreements in place between the creditor and the principal agency specifying the required agent conduct and account management standards to be maintained by the principal agency.

Any complaints by a debtor about alleged misconduct or activity of the repossession agent ultimately rest with the creditor on the basis of the “principal & agent” relationship. The creditor as an original credit provider and Australian Credit Licence holder is a member of the Australian Financial Complaints Authority, an EDR Scheme for resolution of any complaint by a debtor. The repossession agent due to the “principal & agent” relationship is bound by the lawful directions of the instructing creditor.

Every member shall:

1. conduct its business in compliance with all relevant legislation, regulations, regulatory guidance and requirements and this Best Practice Guide
2. conduct its business under names, titles and trading styles which are not intended to confuse, mislead or otherwise embarrass creditors, debtors or members of the public and which will not imply any association with other organisations, government bodies or persons which either do not exist or carry no association with the business
3. cooperate with the IMA, regulators and organisations which regulate or supervise the repossession sector
4. make available on its website (if it has one) or upon a request, a copy of this Best Practice Guide
5. provide adequate and sufficient training to its employees including providing annual refresher training and independent assessment to confirm competency with and that they conduct themselves in accordance with this Best Practice Guide
6. regularly examine and audit their practices, strategies, communications and compliance culture against this Best Practice Guide
7. ensure that all communication complies with this Best Practice Guide and is in plain English
8. have and maintain clear and effective policies and procedures covering all business activities it is engaged in
9. not unlawfully discriminate against any person
10. maintain a separate business bank account operating in the capacity of a trust account (with the words "Trust Account" clearly displayed in the account title) for all funds collected on behalf of creditors except where specific instructions have been provided for the deposit of such funds direct to the creditor's or debtor's nominated account
11. reconcile all transactions (deposits and disbursements) of its Trust Account on a regular basis (at least monthly) and have its Trust Account audited annually by an accountant, having regard to any specific audit requirements in the jurisdictions where the business is licensed
12. inform its clients of the true rates of charges for services provided
13. distribute monies collected on behalf of a creditor only as agreed by the creditor
14. report monies collected and remit proceeds to creditors immediately upon the funds being clear and at least once per month or as otherwise agreed with the specific creditor
15. ensure it undertakes due diligence and desk audits on a regular basis of each secondary agent to whom sub contract instructions are issued to ensure adherence to regulatory requirements and this Best Practice Guide regardless of whether such secondary agent is an IMA member
16. comply with all reasonable requests for information made by debtors or their authorised representatives, regulators and creditors, whether obliged to comply by regulation/legislation or not
17. treat businesses with whom it deals fairly and transparently
18. honour all payment terms agreed with secondary agents and other suppliers



19. make contact at reasonable times and at reasonable intervals in accordance with the *ACCC/ASIC Debt Collection Guideline for Creditors & Collectors (the Guideline)*, taking into consideration the reasonable requests of the debtor, which may include a preferred time and method of communication
20. take appropriate steps to ensure the accuracy of data processed and in particular data relating to individuals and their debts
21. ensure sensitive data relating to debtors (including information such as health, racial or ethnic background or criminal records) is handled appropriately and specific consent obtained from the debtor concerned prior to any disclosure
22. when an account is reasonably disputed or a complaint is received, suspend repossession activity and investigate and where applicable promptly refer the matter to the creditor for further instructions
23. take reasonable steps to ensure that the person being contacted is in fact the debtor
24. communicate with debtors fairly and transparently and not intentionally mislead them
25. cooperate with debtors and their authorised representatives in line with the Guideline, and not act in a manner intended to publicly embarrass or cause them distress
26. treat debtors fairly and not subject debtors or their authorised representatives to aggressive practices or conduct which is deceitful, oppressive, unfair or improper, whether lawful or not
27. exercise forbearance and consideration of a debtor's circumstances of which it is aware, in particular in relation to those who are particularly vulnerable or experiencing long term financial hardship
28. take into account the debtor's circumstances and ability to pay when considering arrangements to pay in order to avoid repossession of a security interest
29. ensure it takes into account the law applicable to the financial agreement underpinning the debt to which the security interest to be repossessed is linked

## LICENSING

Licensing requirements for businesses and persons in Australia engaged in providing repossession services vary according to the State or Territory jurisdiction where the services are provided.

Nationally, there is no single regulatory environment licensing corporations or persons providing repossession services. Instead, the regulatory environment is dependent upon the state or territory where the corporation or person providing repossession services is located.

Members are required to meet the relevant licensing requirements for their business and employees – the details of the current licensing regulations for each State and Territory are available at [www.imal.com.au](http://www.imal.com.au) under Industry → Licensing.

## IDENTIFICATION

Members should ensure their employees engaged in field work activities including the repossession of goods at all times carry photo ID to be used to establish their bona fides as they undertake their duties and dealings particularly with debtors.

Depending upon the jurisdiction where the member operates its business the licensing regulator may issue suitable photo ID evidencing the licence issued, unfortunately this is not the case in all jurisdictions, particularly where there is no licensing requirements. In such circumstances, members are alternatively able to utilise an IMA Photo ID card for their employees and subcontractors.

A sample of the front and rear of an IMA Photo ID card appears below.



Additionally, repossession agents should show upon a request made by a debtor the authorisation (Repossession Authority) from the creditor.

## INSURANCES

Clients of members will typically specify in the service level agreement executed between the parties, the minimum levels of insurance cover a member is required to have in place when undertaking assignments for the client. Members should seek independent advice from appropriately qualified and experienced insurance advisors/brokers to review the level and types of cover to be held to address their own individual business risks.

Insurance broker Gallagher (telephone 1800 727 642) offers an insurance scheme for IMA members tailored to address the range of risks likely to be encountered by members in their business activities.

Members in consultation with their professional insurance advisor should ensure adequate sums insured, as “Co-Insurance Clauses” in nearly all policies will penalise for under-insurance even in the situation of a claim being made for only a partial loss.

Each member should maintain appropriate insurance cover for its specific business risks including but not limited to:

- **Workers Compensation insurance (as appropriate in each state)**

If the member is a national organisation, it may possibly require Extraterritorial Workers Compensation Insurance (covering the difference in conditions between different State Workers Compensation Acts).

- **Professional Indemnity insurance**

Where possible, the ideal is to obtain a “costs exclusive excess and limits” policy (this type of policy means any legal costs are paid without deteriorating the chosen limit of indemnity).

Such policy should be extended to include Fidelity Guarantee cover, or alternatively members should take out a separate Fidelity Guarantee policy (to cover the risk of theft by staff or internal operators).

The policy should also extend to cover Contractors or Subcontractors where applicable, or otherwise members should ensure they have proof such Contractors or Subcontractors have effected their own cover - either way, members should ensure their business is protected for liability that potentially attaches to their business arising from Contractor or Sub-Contractor Claims, even if its own policy does not cover the contractors/sub-contractors themselves.

Members should consider holding Professional Indemnity and Public Liability cover with the same insurer as this removes the possibility of two insurance companies fighting over who is paying the claim in an attempt to avoid liability.

- **Liability Insurance**

Members should consider holding Professional Indemnity and Public Liability cover with the same insurer as noted above.

Members should extend such policy to cover Contractors or Subcontractors where applicable, or otherwise ensure they have proof such Contractors or Subcontractors have effected their own cover as noted above.

Importantly, members should ensure cover is provided for “Goods in your Care Custody and Control” and that the limit is appropriate for the goods held on behalf of clients.

If members are ever involved in towing vehicles (not recommended as best practice) then cover should be purchased for “Hook Liability”. Similarly, if members are ever involved in driving vehicles on behalf of clients (also not recommended as best practice) then cover may be required for “Driving Risk”.

Generally, members should consult their professional insurance adviser so as to determine whether having regard to all items likely to be repossessed whether a separate policy may be best option to protect their liability (e.g. Motor Vehicles, Boats, Aircraft, etc).

- **Business Insurance**

Members should consider extending cover to include Customers Goods with appropriate Limit/Sum Insured for minimum of Fire and Perils, and Theft with and without Forcible Entry.

As noted above members should consult their professional insurance adviser to determine whether having regard to all items likely to be repossessed a separate policy may be best option to protect their liability (e.g. Motor Vehicles, Boats, Aircraft, etc).

- **Motor Insurance**

Members should ensure their motor vehicles are covered appropriately for CTP Insurance and Comprehensive Motor Insurance as required. Additionally, if members are ever involved in driving vehicles on behalf of clients (not recommended as best practice) then cover may be required for “Driving Risk” and in the situation of driving an unregistered vehicle, then cover may be required for “Trade Plate”.

In summary, within the provision of repossession services, the potential risks applicable to each individual member can be diverse and members should fully discuss appropriate cover for the specific needs of their business with an appropriately qualified and experienced professional insurance adviser.

Members are encouraged to effect adequate insurance so as to avoid their business or their individual assets potentially being exposed to unnecessary risk. Legal advice should be sought by any member before electing to remain uninsured given the potential risks associated with their business activities.

## **TOWING CONTRACTORS**

In undertaking repossessions of security items such as motor vehicles, members should not drive or tow the repossessed vehicles but instead always engage the services of appropriate qualified and experienced towing contractors to transport the repossessed vehicle from the debtor’s custody to the required storage or auction premises.

Members offering repossession services should ensure their arrangements with towing contractors engaged to collect, tow, store or deliver security items such as motor vehicles shall always be at “arms length” from their own entity.

In the event a member offering repossessions services also has ownership interests in or a close relationship with an engaged third party towing contractor then this should be disclosed to the client prior to allocation of any assignment from the client to such related entity.

When selecting and engaging a service provider as its towing contractor, members should have regard to the following considerations:

- Evidence that the service provider’s tow trucks are registered for use and insured for comprehensive motor cover and for third party damage to any goods being carried or towed
- Evidence that the service provider’s drivers hold all necessary licences, permits and authorities necessary to provide towing services
- The experience and reputation of the service provider as a towing contractor
- Whether the service provider and its drivers will agree to execute confidentiality agreements in relation to towing assignments
- The facilities available to the service provider to securely store the security item following the repossession such as locked and secured premises either behind gates or indoors

- Evidence that the service provider holds appropriate and adequate insurance cover for all losses arising from any fire, theft or damage to the security vehicle whilst in the service provider's care and custody

Members should execute service level agreements with their service providers supplying towing services and should seek their own independent legal advice as to the appropriate form of agreement to best protect their interests.

Typically, service level agreements between members and service providers supplying towing services address matters including but not limited to:

- a. Detailing the correct legal entities which are parties to the agreement and their respective roles including the manner in which the service provider shall be engaged to attend to specific towing assignments
- b. Whether the agreement is on an exclusive or non-exclusive basis i.e. does the member have the right to use other service providers
- c. The obligations of the service provider, such as:
  - i. To attend nominated premises as directed from time to time by the member's agent to take possession of a repossessed vehicle and to deliver such vehicle to an agreed storage or auction facility in accordance with the procedures and other information provided by the member
  - ii. To not be involved in the task of actual repossession of the vehicle from the debtor and further to not engage in any discussions or other interaction about the repossession with the debtor or related third parties at the address
  - iii. To always be guided and directed by the agent and to withdraw from the nominated address of the repossession in the event violence is threatened or if there is probable reason to believe violence might ensue
  - iv. Acknowledging that despite any implication which might arise as a result of a course of a dealing between the parties, the service provider's employees are not employees of the member but remain employees of the service provider who is solely responsible for workers compensation cover, superannuation, leave and all other employment entitlements
  - v. To ensure the towing vehicle used for each repossession assignment by the service provider is properly registered and fit for the intended use and further that the service provider's driver holds the necessary licences, permits and authorities to drive and operate such towing vehicle
  - vi. To ensure the service provider's driver who attends for each repossession assignment:
    - is presentably groomed in appropriate attire and with due consideration to all occupational health and safety requirements for the service to be provided
    - is courteous and professional at all times and does not make any disparaging gestures, comments or become physically involved in any manner with the debtor or other third parties at the nominated premises
    - is trained and aware of the obligations of the Privacy Act and to not disclose to any party confidential information relating to the specific repossession assignment
    - is trained and aware the member's agent is the authorised party to provide directions to the driver in relation to the services and whether consent has been obtained for entering residential premises to effect the repossession

- vii. To inspect the repossessed vehicle prior to removal from the debtor's premises and to ensure the vehicle is delivered safely to the nominated storage or auction facility in the same condition and kept safe from any damage, theft or any misuse
  - viii. To maintain all relevant records for all assignments undertaken for the member and to provide access to those records upon request by the member
  - ix. To indemnify the member and/or its client for all expenses, losses, damage and costs arising out of any action in relation to:
    - Any breach of the agreement including any privacy breach
    - The performance of any obligations under the agreement
    - Any false or misleading or deceptive conduct by the service providers and/or its employees
    - Any damage to or loss relating to the security vehicle whilst it is in the service provider's possession and control
  - x. To not contract any other party to undertake the assignments issued by the member pursuant to the agreement without prior written consent by the member
- d. The agreed basis for remuneration including the payment of properly supplied and detailed tax invoices for services provided
- e. The basis for any termination of the agreement

## SECURITY ASPECTS

### IN THE OFFICE

Members should provide for the physical security of their office and assets. The member's security policy will depend on the type of building and location, and on what actually needs to be secured or protected.

Reasons driving the need for appropriate security devices, protocols and controls include:

- to provide for privacy and information security in relation to personal and confidential details held and handled in relation to individuals
- to provide for the situational risks associated with public contact
- to protect against:
  - Inappropriate access to internal sections of the premises
  - Unauthorised access to keys
  - Unauthorised access or entry of vehicles, persons or goods to the premises
  - Unauthorised access and/or intrusion to the member's computer systems
  - Deliberate destruction or loss of relevant information

Appropriate security devices, protocols and controls adopted by members, dependent upon the specific perceived risks may include but not necessarily be limited to:

- Fire protection:
  - Smoke detectors and alarms
  - Fire hoses
  - Fire extinguishers
  - Automated heat detectors within fire sprinkler system

- Access to office and building:
  - Use of deadlocks on all external doors
  - Use of a password security alarm with commercial grade back to base alarm monitoring
- Access to office (non public access) areas:
  - Keyed or password accessible locks
  - Metal barring on all externally accessible windows
  - Security access/camera identification at all points of entry
  - Use of fireproof safe and lockable filing cabinets to secure physical files and documents outside of office hours
  - Sign in register for all visitors together with the issuing of a clear Visitor identification tag to each visitor
- Computer systems:
  - Use of unique passwords and appropriate access levels appropriate for duties for each user to the member's computer systems and portable devices including providing for periodic changing of passwords
  - Use of appropriate cyber-security and anti-virus software which is regularly updated
  - No storage of data on workstation PCs
  - Location of servers and associated equipment within locked air-conditioned cabinets or office accessible only by authorised staff
- Portable/mobile devices (smartphones, laptops and tablets):
  - Use of unique pin, password, face ID or fingerprint ID security for each portable device
  - Use of encryption for backups of each portable device
  - Use of automatic locking when device is idle for longer than 30 seconds
  - Deletion of documents, images, notes and messages once an assignment is completed
  - Ensure integrity of each portable device by avoiding any modification of the device outside the manufacturer's guidelines or recommendations

## **IN THE FIELD**

The work of agents engaged by members requires them to have documents out in the field whilst attending to assignments. Those documents can contain personal and confidential details relating to individual debtors which in the interests of privacy and information security must be adequately protected.

Members may consider whether their agents should have an appropriate boot safe installed in their vehicle – such an item can be installed either in the boot area or the rear passenger floor area of the vehicle and must be securely affixed to the vehicle in a manner so as to prevent theft.

Items which could be secured by agents in their vehicle's boot safe whenever the agent is outside his vehicle may include but not necessarily be limited to:

- Cash collected "in transit"
- Receipt books
- All field work and client instructions
- Member instruction manuals
- All privacy related materials

Increasingly in the digital age paper documents are being replaced by access to digital files on portable devices. Members should ensure their agents secure such portable devices as detailed above.

## IN HOME OFFICES

The nature of the industry is that agents engaged by members often maintain an office within their own residential premises. Agents hold documents and other records containing personal and confidential details relating to individual debtors which in the interests of privacy and information security must be adequately protected. For these reasons, members should ensure that their agents have appropriate security arrangements for such documents and records within their home office.

Security arrangements which might be appropriate depending upon the unique circumstances of the specific agent's home office may include but not necessarily be limited to:

- Alarmed security
- Metal bars, security film or roller shutter on any external windows to the home office
- A keyed lockable door to the home office area or if this is not possible an appropriate lockable facility to secure all confidential documents and records within the home office
- A lockable cabinet (filing cabinet) to securely store all confidential documents, records and portable devices when not in use
- The securing of the agent's computer tower to the floor or desk
- The use of password protection for accessing the agent's computer

## BUSINESS CONTINUITY PLANNING

Members should maintain an up to date Business Continuity Plan / Disaster Recovery Plan, such plans being critical to the transparent and continuous operation of the member's business in the event of a disaster event and importantly with the increasing reliance upon technology providing strategies on how in the event of an unforeseen event to maintain and/or re-establish IT and communication services for the business.

A disaster event might be a power cut, a computer virus attack, equipment failure, theft, fire, flooding, accidental damage or health pandemic.

By planning, members will acquire the confidence to make right decisions quickly, to cut downtime and to minimise financial losses in the event of a disaster.

Once a plan is established, members should regularly test and update it at least annually, making sure to adjust the plan to take account of changes to the business or the location(s) the business operates from.

Some strategies for members to test their plans include:

- Drills and training for workplace health and safety aspects of the plan
- Planning meetings to:
  - inform staff of the plan and their individual responsibilities in an incident
  - examine the plan to identify problems and solutions
- Scenario testing by simulating a live event and allowing staff to make decisions as the scenario unfolds in the way they would if it were a real incident
- Testing of disaster recovery plans for IT systems

Members should document the testing and revisions of their Business Continuity Plan including the sign off of the Plan by their management team.



# TECHNOLOGY & DATA

Every member shall ensure:

1. It keeps proper data records relating to assignments, which may be best achieved by use of an appropriate database application
2. Its database applications have individual password protection log on protocols and maintain an audit log of all activities and the responsible user within such system
3. The use of data encryption programs and/or authorisation keys whenever transferring data relating to individuals
4. All data is backed up regularly, preferably on a daily basis with the data backup securely stored off site from the member's business premises or in the cloud and is regularly tested for retrieval in the event of a system failure
5. Access to its data storage room and/or server storage room is restricted to necessary personnel only
6. It maintains appropriate system and download protocols in relation to flash drives, mobile telephones and smart phones, CD burners, flat files and emails so as to prevent unauthorised access to data
7. Firewalls to its systems are maintained to ensure maximum protection of data – this includes transfers of data to and from agents
8. It maintains a policy and procedure for the archiving and storage of hard copy files including a process for destruction on a scheduled basis
9. It maintains a policy and policy and procedure for the retention and storage of electronic data containing personal and/or confidential information including a process for destruction on a scheduled basis
10. All third party service providers accessing its IT systems sign confidentiality and privacy agreements documenting their permitted access to data and systems
11. Its Business Continuing Plan includes a strategy for alternative third party service providers for its IT systems

# TRAINING

All members shall provide appropriate and adequate training for their new employees and subcontractors together with regular periodic refresher and update training for all existing employees and sub-contractors, relevant to their work responsibilities.

Members shall maintain suitable evidence of compliance and other workplace training provided including the scope of the actual training sessions, the names of the employees and subcontractors to whom training was provided and on what dates. A template of a sample Training Register is included with this guide as Annexure 1.

Training for field agents and support staff should include:

- ACCC/ASIC "Debt collection guideline: for collectors & creditors"
- Anti-Money Laundering and Counter-Terrorism Financing Act
- Australian Consumer Law
- Banking Code of Practice
- Corporations Act
- EDR Schemes i.e. the Australian Financial Complaints Authority

- National Consumer Credit Protection Act
- National Privacy Principles Compliance Training (Privacy Act 1988)
- Privacy Act

Additionally, training for other workplace matters may include but not necessarily be limited to the member's policies in relation to:

- Equal Employment Opportunities, Discrimination, Harassment and Bullying
- Hardship and Vulnerability
- Human Rights
- Mental Health Awareness and Management
- Occupational Health & Safety (including Fire & Safety and Work & Environmental Hazards)
- Risk Management

Industry specific online training is available through a range of third party service providers for a variety of subjects including but not limited to:

- ACCC/ASIC Debt Collection Guideline
- Anti-money Laundering & Counter-Terrorism Financing Act
- Banking Code of Practice
- Competition & Consumer Law
- Debt collection
- Modern Slavery Act
- National Consumer Credit Protection Act
- Occupational Health & Safety
- Privacy Act/Australian Privacy Principles

## **DATA PROTECTION AND CONFIDENTIALITY**

Every member shall:

1. process personal and sensitive data in accordance with the relevant privacy legislation ensuring compliance to privacy principles
2. only obtain and process data from legitimate sources or publicly accessible databases
3. take proper steps to correct data where aware that the data is out of date or inaccurate
4. pass on or make properly available information to the creditor in relation to the debtor's financial circumstances, any dispute or complaint, or mental health problem in order to prevent activity from continuing where it is inappropriate
5. use appropriate controls to ensure that any exchange of data to any third party is lawful and adequately protected
6. ensure it has the technical and organisational measures in place to prevent unauthorised unlawful processing and disclosure of information
7. ensure appropriate data protection checks are carried out when speaking with debtors to verify their identity and where necessary and appropriate, validate and update information received from the debtor
8. observe and protect each creditor's data, strategies, integrity and business methods
9. operate a written data retention policy

## **COMPLIANCE AND COMPLAINTS**

Every member shall:

1. keep abreast of relevant legislation, regulations, regulatory guidance and requirements and updates to and guidance relating to this Best Practice Guide
2. periodically test the compliance knowledge of its staff is appropriate to their job functions
3. employ appropriate and sufficient organisational processes to enable the routine monitoring of its compliance performance, including that of its staff and agents
4. keep records of compliance monitoring and testing undertaken in sufficient detail to illustrate compliance performance
5. where a breach of a compliance obligation is detected to report such breach to the relevant client concerned
6. keep records of complaints received from debtors, clients or stakeholders and regularly review and resolve complaints to ensure adherence to industry regulations and service standards are met

## **MEDIA ENQUIRIES**

Australia's media are regularly attracted to the activities of the industry as an opportunity to run stories which often have the effect of exploiting the financial problems and misfortunes of individuals.

Members should not participate in media interviews involving actual cases due to privacy considerations and service level agreement restrictions.

The work of members is undertaken pursuant to a "principal & agent" relationship - consequentially all information, documents, photographic and/or video images gathered in the course of a specific assignment are the intellectual property of the client and as such not available without the client's specific consent for the member's own use other than to complete the client's instructions in relation to the specific assignment.

## CONTACTING DEBTORS

Every member shall ensure the first task of its agents whenever making direct contact with a debtor is to ensure the person being dealt with is the actual individual debtor – this task is to be done before divulging any information about the repossession of the security item, the associated debt or any other confidential information.

Upon establishing and verifying the debtor’s identity, the agent should then identify themselves, who they represent and/or work for and the purpose of the contact.

As an example, identification of a debtor might follow this script:

AGENT Hi – I am X. I would like to speak with Y  
 Y That’s me...  
 AGENT To ensure I am speaking with the right person, would you please confirm your full name and date of birth  
 Y Sure. My name is Y and I was born on DD/MM/YYYY  
 AGENT Thanks for that. I am here on behalf of [CLIENT NAME] to discuss...

## LEAVING MESSAGES FOR DEBTORS

Australia’s privacy laws, the Guideline and the specific licensing acts regulating the industry influence the manner in which messages may be left with third parties for debtors.

Members shall ensure their agents do not divulge their identity as a repossession agent or provide any information to any third party about the nature of their specific assignment.

Agents should not leave any message for a debtor on voicemail, by SMS, by email, on social media or by leaving their business card in any open manner, in a way that might allow a third party to infer the nature of the reason for contacting the debtor.

If using voicemail, SMS, email or social media to attempt contact with a debtor, collectors and agents should have a reasonable belief that the contact will be with the debtor only and no other party. Any message left should be limited to asking the debtor to make contact.

When leaving a message, it is best practice that agents leave in a sealed envelope marked both “private & confidential” and to the debtor’s attention, a plain contact card with a simple but professional message along the lines of the following template:

**To:** .....

**I called at your address to find no one present.**

**Could you please phone me on:**

.....

**Regarding:**.....

..... **Date:** .....

## **FINANCIAL DIFFICULTIES**

Every member shall:

1. unless instructed otherwise by the creditor, accept and communicate to the creditor all reasonable offers by a debtor to repay by instalments to avoid repossession of the security interest provided such debtor has supplied:
  - a. evidence of his inability to pay the arrears and/or debt in full and
  - b. accurate income and expenditure information demonstrating the maximum amount he can afford to pay
2. be empathetic with debtors experiencing financial difficulties and hardship and work to seek amicable resolution within the bounds of the creditor's instructions
3. encourage the debtor to engage with the member regarding possible hardship circumstances and refer debtors suffering hardship to the creditor for consideration
4. in consultation with the creditor, suspend any repossession activity where the debtor demonstrates he is seeking financial assistance

## **HARDSHIP APPLICATIONS**

Agreements entered into pursuant to the National Credit Code (NCC) and National Consumer Credit Protection Regulations (NCCP Regulations) afford debtors certain protections by way of making hardship applications or notifications.

Every member shall ensure its agents when actioning repossession assignments pursuant to NCC regulated agreements watch for and respond immediately and appropriately to any trigger of a hardship application, whether such application is made explicitly or simply implied.

In the event a hardship application trigger is noted, the agent should:

- tactfully gather the hardship detail from the debtor, if he is willing to discuss his situation
- complete a statement of position (income and expenditure details) from the debtor or alternatively leave a blank statement of position form with the debtor for later completion and return direct to the credit provider
- inform the debtor the hardship application shall be referred to the credit provider for consideration
- upon departing the debtor's premises advise the credit provider immediately (or no later than within one business day) details of the hardship application

If the credit provider advises it will not consider the hardship application, the agent should confirm instructions to proceed to further attempt the repossession of the security vehicle. In the event the credit provider advises it will consider the hardship application, the agent should hold all further action in relation to the specific repossession assignment.

The NCCP Regulations impose procedural steps for the credit provider to follow in relation to consideration of a hardship application including in the event the application is declined.

## **MENTAL HEALTH**

Every member shall ensure sensitive information gathered in relation to a debtor's mental health problems is immediately and appropriately passed onto the credit provider and/or any secondary agent instructed for the assignment.

## VULNERABLE DEBTORS

Repossession agents as representatives of credit providers in the field, should be alert to whether a debtor might be vulnerable. A debtor may be vulnerable<sup>1</sup> for a variety of reasons including experiencing mental health problems, mental capacity limitations or family violence.

Wider indications of vulnerability<sup>2</sup> include:

- age-related impairment;
- cognitive impairment;
- elder abuse;
- family or domestic violence;
- financial abuse;
- mental illness;
- serious illness; or
- any other personal, or financial, circumstance causing significant detriment.

In the event of any indication of vulnerability, the agent should follow the specific directives of the client in relation to dealing with a vulnerable debtor. An agent may become aware of a debtor's circumstances only if they tell the agent.

## THREATS OF SELF HARM

In some situations, repossession agents may encounter debtors who present as suicidal or express intentions of self-harm.

Members and their agents have a duty of care and a moral obligation to debtors and should ensure where there is a real or inferred risk of life or injury that necessary steps be taken to reduce that risk and to attempt to provide appropriate assistance.

Generally, the most effective assistance an agent can offer is to call '000' on behalf of the debtor so as to avoid unintended escalation of the situation and particularly if there is any threat to the safety of the agent.

Where an agent encounters a debtor presenting as suicidal or expressing intentions of self-harm, the agent should:

1. Immediately withdraw from the property or debtor's vicinity, if there is a threat to the agent's life or safety or there is a fear the agent may be injured directly or indirectly
2. Immediately call '000'
3. If possible, avoid providing the debtor with keys to the security as there may be items in the security which could be used for self-harm or a suicidal act
4. Refrain from any further dialogue about the debt or security
5. Immediately advise the member and the client of the situation and action taken

If a client has provided specific alternate directives for such situations, these should be followed.

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<sup>1</sup> ACCC/ASIC Debt Collection Guideline for Collectors and Creditors

<sup>2</sup> Australian Banking Association Banking Code of Practice, March 2021 Edition

## **ACTING APPROPRIATELY**

Every member shall ensure its agents go about their duties appropriately and always act in a professional and ethical manner.

Agents undertaking their assignments should always conduct themselves appropriately, including:

- being appropriately attired having regard to the social and climatic conditions of the area being serviced;
- using appropriate transportation, which should not display any signage, sign writing, advertising or anything which might cause a member of the public to identify the nature of the agent's business or occupation;
- being respectful of the debtor's or third party's property;
- not behaving in any manner that a reasonable person might find offensive or anti-social;
- treating all debtors and third parties with respect, dignity and courtesy at all times; and
- not subjecting any debtor or third party to misleading, humiliating or intimidating tactics.

It is appropriate if an agent perceives a threat upon contacting a debtor to seek lawful protection which may include police attendance to "keep the peace". Every member should ensure its agents are aware to never place oneself in a position of danger and to always retreat or remove oneself from any confrontation or perceived unrest when contacting a debtor.

Every member should ensure its agents do not use any of the following items as part of their duties in the field:

- weapons of any kind (including, knives, pocket knives or batons of any kind)
- steering locks for the purpose of attempting to secure a vehicle
- mace or similar self defence style products, regardless of whether or not such products are lawful
- any item, article of clothing or other insignia which might cause persons to believe the agent is from a law enforcement or similar agency or any other association for the purpose of intimidation.

## INSTRUCTION TYPES

Most credit providers / financiers who issue instructions to members for the repossession of security goods and chattels will typically instruct their authorised agent to perform one of the following actions:

- A. Collect the outstanding arrears and costs (no arrangements) or repossess the security;
- B. Collect the outstanding arrears and costs (arrangements as per client instructions) or repossess the security;
- C. Collection only, no repossession; or
- D. Repossess the security, no arrangements.

Where instructions are of instruction types A, B or C members must ensure their agents observe the Guideline as in effect the agent is performing a debt collection process by physically making a demand for outstanding monies.

Where the instructions are of instruction type D members must ensure their agents still consider observing some aspects of the Guideline.

## ACCC/ASIC DEBT COLLECTION GUIDELINE

There are three parts to the Guideline:

- Part 1 relates to how to use the Guideline;
- Part 2 relates to the practical application of the Guideline; and
- Part 3 relates to the Commonwealth consumer protection laws.

Members are required to conduct their business in accordance with all three parts of the Guideline, where applicable.

Whilst most of the Guideline is relevant to the area of repossession activity whenever a demand for money is made, of particular concern are the hours of contact which are at odds to the hours of contact permissible under the NCCP.

The Guideline suggests that if an agent physically attends an address to make a demand for the payment of any outstanding debt, he should only do so between the hours of 9.00am and 9.00pm Monday to Sunday and not on national public holidays.

Once the formal demand process for the outstanding arrears and costs has been made to the debtor, if it is obvious that the debtor will be unable to pay the arrears and the agent then elects to repossess the security item, the agent must consider whether the contract is a contract type requiring a *Consent to Enter Premises* form to be signed. If it is, under Regulation 87 of the NCCP Regulations a request for this form to be signed if made personally can only be made between the hours of 8.00am and 8.00pm Monday to Saturday and not on any Sunday or public holiday.

Given this conflict between the Guideline and Regulation 87 of the NCCP Regulations, it is best practice where a specific contract is subject to the obligations of the NCCP and where instructions include a clear direction to repossess the security if the arrears and costs are not paid that members ensure their agents make no demand for payment outside the hours of 8.00am and 8.00pm Monday to Saturday and not on any Sunday or public holiday.

The Guideline does provide that contact may be permitted at other times in certain circumstances.



Whilst it is correct that for a contract which is not subject to the NCCP, the agent is entitled to repossess the security at any time, it is best practice for members to ensure their agents when attending upon debtors maintain and observe the hours of contact prescribed under the NCCP and the Guideline.

## REPORTING

Every member shall regularly and promptly provide update status and final reports to its clients on repossession assignments handled. Reports should be written in the 3<sup>rd</sup> person, as “*our agent attended*” rather than in the 1<sup>st</sup> person, “*I attended*”.

Updates should be informative and provide a clear picture to the client as to all actions taken at specific times and the outcomes of such actions. Updates should be accurate and concise. The content should be factual based and avoid the use of gratuitous opinion and speculation.

Update status and final reports should clearly detail the date, time and place for each action taken and the parties involved in the specific action – refer sample update report below:

### Sample update status report

*05/03/21 at 10.15am our agent attended the given address of 1A Debtor Ave Debtorsville NSW 2100.*

*Upon arrival the security being a 2017 Holden Commodore, registration number NSW 001 was not sighted.*

*Our agent attempted to interview the debtor but established there were no persons in attendance at the address.*

*A calling card was left in a sealed envelope addressed to the debtor “private and confidential”.*

Members shall ensure every activity undertaken on a file is clearly updated and reported to their client.

Such updates shall include dates, times, address attended and telephone numbers in full as well as accurately detailing all conversations which took place, for example but not limited to any arrangements accepted, issues raised or messages left etc.

Additionally, members shall ensure their agents also attempt to update the current details for the debtor, guarantors, company or any authorised third party including addresses, telephone numbers etc. and where appropriate, report such updated details to allow the client to easily reference these details and update its own systems.

Reports should also include full details of all amounts quoted to the debtor including the breakdown of any costs/fees quoted.

Members should not in reports include any references to the debtor’s or third party’s race, ethnicity, specific medical conditions, colour, religion, sexual preference, political persuasion, intelligence, social status, physical characteristics or character. If it is evident the debtor has or may have a disability or impairment affecting their:

- Capacity to repay (e.g. injury)
- Ability to communicate (e.g. hearing impairment)
- Mental capacity to comprehend their legal rights and obligations (e.g. psychological/ psychiatric condition)

Then the member should report the debtor has a medical condition and recommend an appropriate course of action, such as to consider “Hardship” or specify the type of assistance likely required. Unless the debtor gives express consent for details of their medical condition to be specifically recorded and reported to the creditor, then such specific sensitive information should not be recorded or reported.

Where a language barrier preventing communication with the debtor is encountered, the agent should attempt to identify the language spoken by the debtor and report the communication difficulty to the creditor.

In circumstances where the conduct of a debtor or third party is encountered to be characterised as abusive, aggressive or threatening, the agent should appropriately report to the creditor what the debtor or third party did or said – reports should not include any subjective assessment or judgment as to the debtor’s or third party’s character. In the event an agent encounters conduct by a debtor or third party is violent, the agent should factually report the incident.

Whilst impossible to provide an absolute timeframe for the frequency of reports to clients, members should have regard to the following:

- Updates should be provided in accordance with the specific client’s requirement detailed in the SLA or instructions, or in the absence of any specific requirements being detailed, within a timely fashion.
- Routine updates (e.g. attended an address, left a card for the debtor to make contact) ought to be provided wherever possible no later than the morning of the next business day.
- Upon the security being repossessed or the collection of funds it may be more appropriate to provide an immediate update to the client, depending upon the requirements of the SLA entered into with that client
- Obligations under the NCC require financiers / credit providers to issue time-sensitive notices to their debtors upon the repossession of any securities, so it is important that such information is communication promptly and without delay.

## **INSPECTIONS & PHOTOGRAPHS**

Upon the repossession of a vehicle, agents should immediately undertake a visual inspection of the vehicle, noting such matters as:

- Whether the vehicle is drivable
- The registration plates on the vehicle and the expiry date of the registration
- The condition of the exterior, interior and tyres of the vehicle
- The speedometer and fuel gauge readings
- Details of any personal items left in the vehicle.

Agents when completing a vehicle repossession should use a checklist style inspection report – refer to sample template included as Annexure 2. Such information is used as part of the client reporting process. Agents should record digital images of the vehicle to evidence its condition at the time of repossession.

Members should promptly provide a detailed report to their clients including details of the inspection and the images of the vehicle.

Vehicle inspection reports and images of the vehicle taken immediately upon repossession are important for a number of reasons including:

- Presentation of such information allows clients an understanding of the condition of the security repossessed allowing a better view of the vehicle’s likely value upon disposal at auction;

- Providing for the member an effective and reliable record of the vehicle's condition upon repossession and when passed to the care and custody of the towing contractor in the event any claim is made by the debtor or others of damage or loss being caused to the vehicle following repossession.

## **COLLECTING MONIES**

Members should maintain an appropriate procedure for the receipting of all monies collected from debtors such that:

- Agents complete and issue a receipt for funds collected from debtors whether as a full or partial payment for the debtor's account and providing the debtor with the original copy of the receipt, including the following minimum details:
  - Name and address of the entity issuing the receipt
  - Date receipt issued
  - The full name of the debtor
  - The debtor's account/loan reference number
  - The creditor's name
  - The amount collected
  - The type of funds collected e.g. cash, personal cheque, bank cheque etc
- Agents should then promptly notify the creditor of the payment received and attend to the banking of such funds in accordance with the directions of the creditor either given for the specific debtor's account or otherwise agreed with the creditor in the SLA. In the absence of any creditor instructions on the handling of funds collected, such funds should be promptly deposited to the agent's Trust Account and then properly accounted for to the specific creditor in accordance with the trust account's processes.

Members should maintain a separate business bank account operating in the capacity of a trust account (with the words "Trust Account" clearly displayed in the account title) for all funds collected on behalf of creditors except where specific instructions have been provided for the deposit of such funds direct to the creditor's or debtor's specific account.

Members should maintain proper procedures to reconcile all transactions (deposits and disbursements) of its Trust Account on a regular basis (at least monthly) and have its Trust Account audited annually by an accountant, having regard to any specific audit requirements in the jurisdictions where the business is licensed.

## **TRESPASS**

Whether or not an act of trespass might be committed is a concept members shall ensure their agents are aware of and consider as they go about their lawful duties undertaking repossessions.

An act of trespass is committed where consent to enter premises is not granted, or where consent is withdrawn by an occupier, and if there is no other lawful authority to be on the land by way of legislation or court order.

A contract to give consent is neither a piece of legislation, nor a court order, but rather a civil agreement which is subject to hearing by a court if the terms of the agreement are alleged to have been breached. A person giving consent in a contract, can subsequently withdraw such consent if he so wishes.

The remedy for withdrawal of such consent (which would be effectively a breach of contract) is a hearing before a civil court for damages.

A civil contract does not constitute law overriding the law surrounding trespass, which is the common law surrounding the protection of private property. The prevailing authority on trespass is the High Court of Australia case, *PLENTY v. DILLON* [1991] HCA 5 (1991), 171 CLR 635.

There is an implied right to enter private property for any lawful purpose – an agent who enters any property in exercising such a right, must walk directly to the front door. However, when such right is withdrawn, i.e. by the occupier of the private property directing a person to leave, then the person must immediately leave it or he will at that point be committing an act of trespass.

A court order (see below) allows entry to a nominated property for the purpose of a repossession subject to the NCCP.

In attempting a repossession, members should have their agents upon entering a property (pursuant to an order to repossess) place a hook from the tow truck onto the vehicle to be repossessed (if such vehicle is accessible). In the event the agent is asked by the occupier to leave the property, the agent should immediately agree and will be able to do so with the security vehicle attached.

## **CONSENTS**

Members when undertaking repossession of security items from residential premises have legislative obligations pursuant to the NCC and the NCCP Regulations:

### ***GOODS MORTGAGE***

All goods mortgages require the consent of the occupier of residential premises for the purpose of taking possession of mortgaged goods unless the court has authorised entry.

In accordance with R.87 of the NCCP Regulations, the consent form signed by the occupier is required to be in accordance with Form 13 and a request for such consent form to be signed if made personally can only be between the hours of 8.00am and 8.00pm Monday to Saturday and not on any Sunday or public holiday.

### ***CONSUMER LEASES***

All consumer leases entered into after 1 March 2013 require the consent of the occupier of residential premises for the purpose of taking possession of goods unless the court has authorised entry.

In accordance with R.105L of the NCCP Regulations, the consent form signed by the occupier is required to be in accordance with Form 19 and a request for such consent form to be signed if made personally can only be between the hours of 8.00am and 8.00pm Monday to Saturday and not on any Sunday or public holiday.

## **COURT ORDERS**

As noted earlier in this guide, members when attempting repossession of security items from residential premises have legislative obligations pursuant to the NCC and the NCCP Regulations to obtain the consent of the occupier of residential premises before entering to effect repossession.

In the event consent cannot be obtained from the occupier, members require a court order authorising entry onto residential premises for the purpose of taking possession of the security goods and should seek the specific instructions of their client as to the obtaining of such an order.

Under the NCC, a credit provider may make an application under s100 for an order to enter residential premises for the purposes of taking possession of mortgage goods or alternatively under s101 for an order that a person who has possession of the goods delivers them to the credit provider at a specified time or place.

## **LIENS**

The term “lien” refers to a type of security interest, being a passive right to retain (but not sell) property until a debt or other obligation owing to the lien holder has been discharged.

From time to time a security item to be repossessed by members will be discovered to be in the custody of a business such as a mechanic, smash repair firm or long term car parking facility where the particular business asserts a lien over the security item for the payment of outstanding monies due to the business in relation to the security item before it will be released for repossession purposes.

Whenever dealing with such situations, a member should ensure its agent obtains a written invoice from the business which is asserting the lien.

Such invoice should include the entity’s name, business address, contact details, Australian Business Number and be labelled as a Tax Invoice.

Further the invoice should be fully detailed to include everything relevant to the basis for the asserted lien including such matters as:

- description and/or identification details of the security item
- details of any repairs undertaken;
- if repairs effected whether an insurance claim was lodged and if yes, full details of the insurer, the claim number and status of any approval;
- the number of days in storage
- details of any claimed towing fees etc.

Whenever possible the agent should also obtain photographs of the security item to provide to the client with the invoice so a decision can be made as to whether to pay the lien to allow repossession to proceed.

With the invoice and photographs gathered, the member should report the situation of the asserted lien to its client and seek approval to pay the lien. No payment should be made without the specific approval of the client.

## **EMBARGO NOTICE**

Members should also consider in situations where a lien is asserted, before departing to obtain the specific client’s instructions to pay the lien, completing an embargo notice to protect the client’s security.

An embargo notice seeks to prevent the lien holder from disposing of the security or releasing it to another party prior to payment of the lien. As an embargo notice creates a binding agreement between the financier and the lien holder, members should obtain approval from their client financier before completing an embargo notice, which is an express agreement between the lien holder and the financier, whereby the lien holder recognises the financier’s interest in the security and agrees not to release the security without written consent.

A template for an embargo notice is included as Annexure 3.

## **SKIP TRACING**

Members should only use fair and lawful means to collect information in relation to debtors or related third parties and further any information collected should directly be relevant to either tracing the debtor and/or the security asset.

Members should not:

- Be deceptive or misrepresent his or her identity to debtors or related third parties
- Advise or infer to any party that the person being sought is wanted in relation to a financial matter
- Post any publicly viewable messages to social networking sites or online forums for the purpose of tracing a debtor or security asset

## **SURVEILLANCE**

Members routinely undertaking repossession of security assets should:

- Not repeatedly observe a debtor or a related third party in or around their home or place of employment in such a manner to cause the debtor or third party to be concerned he or she is under actual surveillance – for the sake of clarity, it is noted that as security assets such as motor vehicle are often parked in garages or otherwise out of direct sight, it is appropriate that agents may need to make repeated attendances to an area to search for the security asset to be repossessed
- Not follow or attempt to follow a security asset being driven by a debtor or a third party
- Not instruct a tow truck operator to follow a security asset being driven by a debtor or a third party
- Not place kindergartens, primary & secondary schools, hospitals, doctors or medical surgeries, nursing homes, churches or other places of religious worship under observation.

From time to time, there will be circumstances where surveillance might prove to be necessary and an appropriate strategy in response to deliberate efforts by a debtor or a third party to thwart repossessions of a security asset. In such situations, members should gather clear and specific instructions from the creditor as to what if any surveillance or asset tracing efforts are to be undertaken for the assignment.

The IMA considers a "complaint" means any expression of dissatisfaction (implied or explicit) about the way in which a member has conducted itself and a "dispute" means any denial of certain facts in relation to the debt itself. A request for information, such as a copy of the financial agreement or a statement of monies owing, does not of itself amount to either a complaint or a dispute.

Every member shall ensure it maintains an effective dispute and complaint handling procedure and that it does not operate any unreasonable barrier for debtors to submit a complaint or dispute. Where accounts are within the jurisdiction of an EDR Scheme to which the creditor belongs, members must adhere to the relevant rules required of the creditor by the EDR Scheme.

Every member should develop with reference to ASIC's *Regulatory Guide 165: Licensing: internal and external dispute resolution* a written policy outlining its process for the efficient and fair resolution of complaints and disputes that involve or relate to its business operations. Such policy should specify the dispute resolution principles, procedures and guidelines which underpin its process. [Note: on 5 October 2021 *Regulatory Guide 165* will be withdrawn by ASIC and replaced by *Regulatory Guide 271*.]

## COMPLAINTS

Every member shall:

1. cease repossession activity in relation to a specific debtor whilst investigating any complaints in relation to dealings with that debtor
2. acknowledge receipt of complaints and advise the timescales for investigation
3. following a request, provide debtors with a copy of its complaint handling procedures, which should be accessible to the public on the member's website
4. handle and deal with complaints, whether verbal or written (there is no requirement for complaints to be in writing) properly and in a clear manner
5. advise complainants of their right to refer the complaint to the creditor as and where appropriate
6. in consultation with the specific creditor take appropriate remedial action in response to proven complaints
7. undertake root cause & trend analysis of complaints and take corresponding action to improve business practices
8. keep a record of all complaints, howsoever received, and ensure the appropriate management are aware of the level, nature and root cause of complaints

## DISPUTES

Every member shall:

1. engage with creditors and debtors to ensure disputes are investigated and dealt with properly
2. cease repossession activity whilst investigating a valid dispute
3. provide a response to the debtor detailing the member's conclusion to the dispute
4. provide sufficient information to the debtor to justify the stated conclusion of the dispute

## **EXTERNAL DISPUTE RESOLUTION**

Recognising the work of members is mainly undertaken pursuant to “principal & agency” relationships with their clients, there is no regulatory or general obligation requiring members to belong to an EDR Scheme.

Members are not required to hold an ACL for the work performed.

Instead, clients of members which are original credit providers each hold an ACL and accordingly must belong to an EDR Scheme.

Given the underlying “principal & agent” relationship, any complaint by a debtor about the alleged conduct or activities of a member should be directed to the specific client. Each member is responsible to its client for any breach of agreed conduct and activity standards set out in the SLA between those parties.



In this Best Practices Guide, the following interpretations shall apply:

The singular includes the plural and vice versa.

A reference to one gender includes a reference to all other genders.

Headings are included for the sake of convenience only and shall not affect the interpretation of the sections to which they relate.

References to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute.

**ACCC** is a reference to the Australian Competition & Consumer Commission.

**ACL** means an Australian Credit Licence issued by ASIC pursuant to the National Consumer Credit Protection Act, 2009 and Regulations.

**Agent** means the person who is the commercial agent who attends to the actual field work for the creditor's assignment, being a person working either as an employee or sub-contractor

**ASIC** is a reference to the Australian Securities & Investments Commission.

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

**CAPI** means the NSW Commercial Agents and Private Enquiry Agents Act, 2004 as amended.

**Creditor** means a person which provides original instructions to the Principal Agency for field work to be undertaken for the purpose of repossessing a security item e.g. a motor vehicle pursuant to the breach of a financial agreement between the Creditor and a Debtor.

**Debt** means an amount of money owed including any alleged debt owing by the Debtor following a breach of the financial agreement between the Creditor and the Debtor.

**Debtor** means a person who has entered into a financial agreement with the Creditor - such agreement may be for consumer or commercial purposes.

**EDR Scheme** means the ASIC approved External Dispute Resolution Scheme, the Australian Financial Complaints Authority (AFCA).

**Guideline** means the joint ACCC/ASIC Debt Collection Guideline for creditors and collectors.

**IMA** means the Institute of Mercantile Agents Limited an industry association representing through sector groups businesses and individuals providing services in Australia as collectors, investigators, process servers and/or repossession agents.

**Member** means a financial member of the IMA.

**NCC** means the National Credit Code.

**NCCP** means the National Consumer Protection Act 2009.

**NCCP Regulations** means the National Consumer Credit Protection Regulations, 2010.

**Person** means and includes a natural person, a Principal, a firm or any other legal entity whether acting as a trustee or not.

**Principal Agency** means a person which has the express, implied or ostensible authority having received the original instructions from the Creditor for field work to be undertaken for the purpose of repossessing a security item e.g. a motor vehicle pursuant to the breach of a financial agreement.

**Secondary Agency** means the party which receives subcontracted instructions from the Principal Agency to provide services to complete the original instructions from the Creditor for field work to be undertaken for the purpose of repossessing a security item e.g. a motor vehicle pursuant to the breach of a financial agreement.

**Security interest** means an interest in or a power over goods or land (whether arising by or under an instrument or transaction) which secures payment of a debt.

**SLA** means a service level agreement between a member and its client setting out various obligations of those parties including the required conduct and activities of the member.

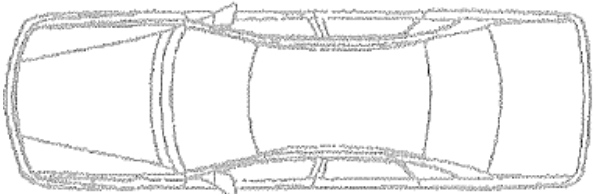
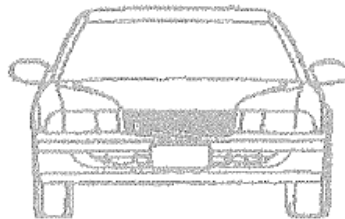
**Statute-barred debt** means a debt for which the Debtor is entitled to claim an absolute defence to legal proceedings to collect the debt due to the passage of time (as set out in the relevant statute of limitations).

**Third party** means any person other than the Debtor, but does not include a Debtor's legal representative, trustee, or other authorised representative.



# ANNEXURE 2 VEHICLE INSPECTION REPORT

				Y	N
Client:	Client Ref:	Vehicle Drivable			
Date:	Time: <small>am/pm</small>	Keys Obtained			
Customer:		Consent signed			
Secured from:		Voluntary Surrender			
Towed by:	Docket No:	GPS			
Stored at:	Storage Payable:	Radio			
		Service books			
Year:	Make:	CD Player			
Model:	Body:	Alloy Wheels			
Rego:	Expiry date:	Manual			
Vehicle Condition: Poor - Fair - Good - Excellent	Odometer: <small>kms</small>	Auto			
Vehicle Interior: Poor - Fair - Good - Excellent	Colour:	LPG			
VIN:	Accessories/ Extras Fitted	Phone Kit			
Personal property: (please itemise)		Jack			
		Tyre L/F			%
		Tyre R/F			%
		Tyre R/R			%
		Tyre L/R			%
		Tyre Spare			%
		Photos			



DENT ○

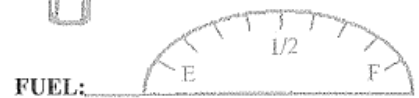
SCRATCH —

CHIP ×

BROKEN B

SMASHED 

CRACKED ⊗



Additional Comments:

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Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_ Job No: \_\_\_\_\_

# ANNEXURE 3      EMBARGO NOTICE

**TO:** .....  
(Finance Company / Credit Provider)

**CHATTEL:** .....  
(Make, model, registration number)

**CUSTOMER:** .....  
(Full name of each borrower)

**CONTRACT NO:** .....

**We refer to our conversation of** ..... (Date)

**With** .....  
(Repairer's trading name, address and phone number)

We confirm the above finance company's / credit provider's financial interest in the above chattel, and ask you not to release it without written approval from the finance company.

Please confirm, via completion of the following document.

Yours faithfully,

.....

We confirm that we hold embargoed, the chattel referred to above, on behalf of ....., and that we will not release it without written instructions from the finance company / credit provider.

**For and on behalf of:** .....  
(Repairer's trading name, address and phone number)

**Signed by:**

**Name:** .....

**(Signature)** ..... **(Date)** .....

ACCC .....	17, 18, 24, 33
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CAPI .....	33
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Legal & Regulatory .....	6
Liability Insurance .....	11
Licensing .....	10
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Vulnerable Debtors .....	22
Workers Compensation Insurance .....	11

## CONTACT DETAILS

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