

DIS/17315
(LAC12/100)



The Hon Gabrielle Upton MP
Attorney General



File14/003805

Ms Ronda Miller
Clerk of the Legislative Assembly
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Ms Miller

Please find enclosed a copy of the NSW Government's response to the Legal Affairs Committee's report titled "Debt Recovery in New South Wales".

I would be grateful if you could arrange for the Government response to be tabled. I have written to the Clerk of the Legislative Council in similar terms.

Yours sincerely



GABRIELLE UPTON MP
Attorney General

16-6-15

NSW Government response to NSW Legislative Assembly Legal Affairs Committee inquiry into debt recovery

The NSW Legislative Assembly Legal Affairs Committee (the Committee) released the report of its inquiry into debt recovery in NSW in November 2014. The report makes 22 recommendations across a variety of different policy and operational areas with the aim of streamlining debt recovery processes in NSW to make them more efficient and effective.

Licensing commercial agents and debt collectors

The Committee recommends that the Government introduce negative licensing for commercial agents who do not have face-to-face contact with debtors, and transfer responsibility for licensing commercial agents and private inquiry agents from the NSW Police Force to NSW Fair Trading (**Recommendations 1 and 2**). The Government supports these recommendations in part. The Government agrees with the Committee that NSW Fair Trading is best placed to regulate commercial agents as it already handles complaints about debt collectors and breaches of consumer laws. Further work will be done to develop the details of a new and more streamlined regulatory framework for commercial agents in consultation with industry stakeholders and the Government will commence this work shortly.

The Government considers that responsibility for regulating private inquiry agents should remain with the NSW Police Force at this time, as key stakeholders did not support transferring this responsibility to NSW Fair Trading.

Improved information for court users

The Committee makes two recommendations about improvements to court accessibility and information for court users (**Recommendation 6 and 7**). The Committee was concerned that unrepresented debtors and creditors found it difficult to navigate complex court processes and find the information they need.

The Government supports these recommendations and understands the importance of plain English information for unrepresented litigants. The Government's LawAssist website and the LawAccess telephone line together provide litigants with up-to-date information about going to court and assistance with court processes. Court registry staff can help people to access this assistance. As part of the development of the Civil Justice Strategy, the Government will be considering ways to further improve the information available to court users.

Increased protections for debtors

The Committee recommends increased protections for debtors through technical changes to the operation of garnishee orders and writs for the levy of property (**Recommendations 8 and 11**). These issues were also considered by the Government through the statutory review of the *Civil Procedure Act 2005* (the CPA statutory review). The Government will convene a Debt Recovery Working Group as part of its program of stakeholder consultation for the development of the Civil Justice Strategy. The Debt Recovery Working Group will determine how these

proposals can best be implemented to increase protections for debtors while ensuring effective debt recovery for creditors.

The Committee also recommends that the Government review the level of funding provided to non-profit financial counselling services and consider whether debt collectors should be required to provide referrals to financial counsellors when contacting debtors (**Recommendation 22**). The Government will review financial counselling funding from 1 June 2015 as part of the regular funding cycle. It will also consider whether new requirements should be placed on commercial agents as part of the new licensing framework that will be developed in response to Recommendations 1 and 2.

The Committee recommends that Government agencies publicly report data on the number of cautions they issue, the number of penalty notices they issue and the number of internal review requests they handle (**Recommendations 20 and 21**). Such reporting will increase transparency and ensure that penalty notices are used effectively and enforced fairly. The Government supports in principle all relevant agencies monitoring the issuing of penalty notices and the management of internal review requests. The Office of State Revenue (OSR) already collects and reports data on its website about several types of penalty notices that make up the majority of penalty notices issued in NSW. As it handles internal review requests on behalf of most issuing agencies, it can expand its reported data to include information about such reviews.

Improved court and enforcement processes

The Committee recommends that the jurisdiction of the Local Court's Small Claims Division be expanded so more debt recovery matters can be pursued using its simplified procedures (**Recommendations 4 and 5**). As this recommendation affects the structure of the civil justice system, the Government will consider it through the development of the Civil Justice Strategy to ensure that the system as a whole serves the interests of litigants.

At the detail level, the Committee recommends two improvements to the operation of garnishee orders from the creditor's perspective (**Recommendations 9 and 10**). These issues were also considered by the CPA statutory review. The Government will introduce legislation to implement **Recommendation 10**, which will clarify the way a financial institution can recover the cost of administering garnishee order. The Government will refer **Recommendation 9** to the Debt Recovery Working Group to determine the technical details of how garnishee orders should apply to term deposit accounts. The Committee also recommends that options for service of court documents be made more flexible (**Recommendation 3**). The Government will ask the Debt Recovery Working Group to explore how this can be achieved in way that best balances the interests of debtors and creditors.

The Committee makes three recommendations to help a creditor more easily locate a debtor through expanded discovery procedures (**Recommendations 16, 17, and 18**). The Committee suggests that new discovery procedures should be introduced after judgment has been entered and in the Local Court's Small Claims Division. These issues were considered to some extent by the CPA statutory review. As these matters are governed by the Uniform Civil Procedure Rules, the Government will refer these recommendations to the Uniform Rules Committee. The Government will also consult with the Privacy Commissioner to explore whether consent can be used

to expand the usage of personal information collected by Government agencies (**Recommendation 19**).

Finally, the Committee has recommended that the Government and Auditor General review several aspects of the enforcement and debt recovery function currently performed by the Office of the Sheriff, including considering whether this function should be outsourced (**Recommendations 12, 13, 14 and 15**). The Government is currently reviewing the Office of the Sheriff's enforcement function in the context of all the debt recovery activities carried out by different Government agencies. The Government is considering whether duplication could be reduced and the activities streamlined. The selection of issues for performance audits is a matter for the Auditor General but the Government supports in principle such an audit being conducted.