



Mr John Miller  
Legal Affairs Committee of the Legislative Assembly  
Parliament of New South Wales  
[Legalaffairs@parliament.nsw.gov.au](mailto:Legalaffairs@parliament.nsw.gov.au)

Dear Mr Miller

### **Inquiry into Debt Recovery in NSW**

I refer to your letter of 23 June 2014 requesting additional information from OSR following the appearance of Ian Phillips before the Legal Affairs Committee on Monday 16 June 2014 in relation to the above inquiry.

Attachment "A" provides responses to the 3 questions attached to your letter.

You also asked for advice regarding a question about any benchmarking conducted by OSR which Mr Phillips took on notice during the hearing.

OSR participates in benchmarking in relation to fines administration through the Australia and New Zealand Fine Enforcement Reference Group (ANZFERG) which meets annually. ANZFERG is in its tenth year and has delegates from every Australian State and Territory, as well as New Zealand involved. The jurisdictions, while having similar functions in many respects, are subject to different legislation, enforcement mechanisms, fine sources and organisational structures. This poses challenges to effective benchmarking and has prompted a review of ANZFERG benchmarking measures and definitions, with the goal of formalising new, collaborative measures.

In relation to tax administration, the revenue offices across all jurisdictions in Australia participate in benchmarking of their respective performances. A benchmarking report is prepared annually by an external consultant.

As these benchmarking reports are prepared using information supplied on a confidential basis by each revenue office, I am unable to provide the Committee with copies without first consulting with other Commissioners.

Yours sincerely

Tony Newbury  
**Executive Director**

*16 July 2014*

## OSR responses to supplementary questions

### 1. Are you aware of the National Hardship Register?

The National Hardship Register is a recent entrant to the credit reporting industry and is being supported on a pilot basis by members of the Australian Collectors and Debt Buyers Association. It was set up by a number of the companies involved in debt purchase as a means of sharing information initially between their industry group with regards to individuals (whose debt they may have purchased from a financial institution or Utility) and that have been assessed as being in financial hardship. The objective is to reduce repeated (and costly) action against people who don't have the resources to pay their debts.

The register permits individuals to obtain advice from financial counsellors and have themselves listed on the register with the purpose of having debt waived or written off, or re-evaluated after two years.

#### a. What are the benefits of the register and do you consider that the pilot program should be more widely implemented?

Developing a widely supported strategy for people in hardship has merit. If the pilot succeeds it should result in a system that is supported by all industry groups, with evidenced based processes to look after the needs of the vulnerable in the community, have systems in place that support them to improve their positions whenever possible, and also protect the rights of those that seek to recover monies owed. It will require the backing of all the major business sectors.

OSR applies a range of methods to assist vulnerable people who incur fines and tax debts.

In the case of taxes and recovery of grants incorrectly paid, OSR is able to enter into instalment arrangements tailored to the client's financial circumstances. Taxpayers who are not satisfied with payment arrangements offered by OSR may apply to the Hardship Review Board established under the Taxation Administration Act. The Board has representatives of the Chief Commissioner, the Auditor General and the Secretary of the Treasury.

In the case of Fines, options available to clients include:

- the (Fines) Hardship Review Board which has a representative from each of the Secretaries of the Treasury, the Office of Finance and Services and Police and Justice.
- Relief available under Ministerial Guidelines issued under s.120 of the Fines Act dealing with writing off unpaid fines, the issue of fine enforcement orders or community service orders and the taking of other enforcement action under the Act;
- Work and Development Orders which are available to fines debtors who have a mental illness, an intellectual disability or cognitive impairment, are homeless, experiencing acute economic hardship, or have a serious addiction to drugs, alcohol or volatile substances;
- Instalment arrangements which are available through Centrepay in the case of people receiving Centrelink benefits, or OSR's call centres or using an on-line self-service facility.

OSR deals with a significant number of individuals with fines debts that are on Centrelink benefits and who manage to finalise their outstanding fines over time, paying as little as \$20 per fortnight.

Access to the National Hardship Register would allow OSR to be proactive in identifying those clients that may qualify for special assistance from one of the available relief programs.

However, the secrecy provisions in the Taxation Administration Act and the Fines Act, and the privacy protections in the Privacy and Personal Information Protection Act would prohibit OSR from providing details of clients suffering hardship for publication on the Register.

## **2. Does the debt recovery process utilised by the NSW Office of State Revenue provide sufficient mechanisms to assess an individual's overall capacity to pay outstanding fines?**

Currently OSR uses a number of mechanisms to determine the capacity of individuals to pay outstanding fines. These include:

1. Assessment by contact centre operators of an individual's circumstances to determine if they are able to pay in full, pay by instalments, or qualify for a WDO (in the case of an unpaid fine);
2. Procedures which include a repayment matrix (a set of procedures, including appropriate questions to ask a client) used by contact centre operators to work out a suitable payment plan that meets the needs of the individual;
3. Use of Examination Notices that permit OSR to call a person to be examined by a court or by authorised OSR staff (in the case of an unpaid fine) to examine the client under oath;
4. Asset search capability via Land Titles or ASIC re Directorships;
5. Property Seizure Orders that are executed by the Sheriff's Office, who are governed by the Civil Procedures Act, Regulations and Rules;
6. Access to information about a fine defaulter's credit information file, including information that is reasonably necessary in order to identify the individual to whom the file relates, the person's address and employment details;
7. Use of Garnishee provisions under the Fines Act;
8. Use of orders under the Taxation Administration Act, similar to a Garnishee Order, permitting the Chief Commissioner to recover a tax debt from a third party, including financial institutions and employers.

## **3. What legislative or regulatory reforms would improve the efficiency of debt recovery processes undertaken by State Debt Recovery?**

OSR is continually reviewing legislation and procedures to enhance the debt recovery process. Some important issues currently being considered include:

1. Taking advantage of the Whole of Government approach to client services provided by the Government to enable OSR to have access to up to date address and contact information;
2. Allowing OSR to access details of financial institutions that appear on an individual's or company's credit history file, to permit more efficient application of the Garnishee provisions;
3. Relaxing the requirements for penalty notices and penalty reminder notices to be served within specified limitation periods where a fine defaulter fails to update address and contact details with Roads and Maritime services. The service requirements limit OSR's powers to enforce fines once the relevant limitation period has expired. The limitation provisions enable fine defaulters to avoid enforcement action if they fail to provide changes in their address to Roads and Maritime Services for the purposes of Drivers Licences and Vehicle Registrations, or if they return notices, unopened, to OSR as unclaimed mail.