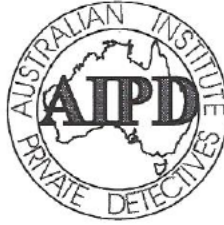


## **DEBT RECOVERY IN NSW**

**Organisation:** Australian Institute of Private Detectives  
**Name:** Mr John Bracey  
**Position:** President  
**Date Received:** 23/07/2014



## Australian Institute of Private Detectives

President: John Bracey [REDACTED]

Website: [www.aipd.com.au](http://www.aipd.com.au)

23/7/14

The Chair  
Legal Affairs Committee  
NSW Parliament  
Macquarie Street  
NSW 2000

### **ADDITIONAL SUBMISSION TO LEGAL AFFAIRS COMMITTEE RE DEBT RECOVERY**

Dear Sir,

I was going through some of our submissions which are listed on our website and I came across something which was particularly interesting in relation to a submission we made to the privacy Commissioner in 2004 and I enclose by way of attachment a copy of the community poll that was done in 1999 I think it is particularly relevant and also covers the questions of bad debts.

I thought it might be interesting for you because debt collectors or commercial agents are often require access to information to locate people, however I have acquired a list of organisations and government departments that have access to the National Police checking service accredited agencies list which I also attach.

It is our understanding that this list was current as at the 12/12/2013 and we believe that the access is for employment purposes, however private investigators and commercial agents who have to have their fingerprints taken, be licensed and qualified have no access to any such information.

Perhaps it might be interesting to note that the Prime Minister Tony Abbott has publicly advocated that in relation to the MH17 air crash in the Ukraine a complete independent and transparent investigation, this apparently has been supported by just about every nation worldwide.

It might be interesting for the committee to perhaps research how many private investigators and commercial agents are employed by government departments and we probably include the State debt recovery office who have any qualifications for investigations and debt collection and whether any investigators in any government

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Vice President: Barry Sweet [REDACTED]

Secretary: Kurt Hippe [REDACTED]

Treasurer: Steven Stocks [REDACTED]

Department are qualified and have their fingerprints taken but have access to information in other government departments to enable them to do their job.

Perhaps the government might develop a policy of having independent investigators to do the investigations on behalf of government departments and perhaps outsourcing debt collections to the private sector which would save huge amounts of money.

It is odd to understand how the State debt recovery office does not attend any court in the State of New South Wales to get a judgement of the alleged debt, they do it by fear by threatening people that if they do not pay the fine their licence will be cancelled which of course leads to criminal charges i.e. driving a vehicle unlicensed uninsured with the potential of a jail term if found guilty, this is properly just a quirk of the law or on the other hand it might be that government departments are above the law because the government can pass laws to make them unaccountable to the people of New South Wales as other people are.

As you can see from our website we have been endeavouring to get justice for investigators and commercial agents particularly in the state of New South Wales for almost the last 20 years.

We apologise for burdening the committee with further submissions but as previously stated to the committee private investigators and commercial agents are inextricably entwined in that to make an enquiry under the CAPI Act you must have a private Inquiry agents licence, this applies to commercial agents who have to make enquiries so in effect they have to have two licences as opposed to one and two qualifications as opposed to one as well as having to have their fingerprints taken when they cannot even access the electoral role or other government information.

We have been informed by one of our members that Mr Cameron Smith Director of SLED indicated to the Committee "that they use within police what we call the Integrated Licensing System it is 'integrated' because it is integrated with our operational policing system. Every night a full list of licence holders is run across the policing system and in the event that there is a charge or even for that matter and information report that we think would be of relevance, my Adjudication team is aware that the next day and we will see whether that activates any grounds under legislation to cancel the licence you will take that action accordingly". This means that private investigators and commercial agents are checked every night across the whole of the police Operational Policing System.

We notice that the government is considering having grannies and grandfathers having to have a qualification of Certificate III in childhood studies, will they have to be licensed and subject to SLED's Integrated Licensing System every night?.

Yours faithfully,

  
John Bracey

where the ECHR has recognised that it will take very weighty reasons to justify discriminatory measures. These areas include sex and race, but not sexual orientation or disability as yet.

See also Article 14, **THE HUMAN RIGHTS ACT 1998: AN OVERVIEW**

### **Equality Bodies**

Under each of the existing discrimination Acts separate equality commissions have been established:

- **Commission for Racial Equality.**
- **Disability Rights Commission.**
- **Equal Opportunities Commission.**

In October 2003, the government announced plans for a single equality body for Britain. The proposed body has a working title of the Commission for Equality and Human Rights (CEHR).

It is envisaged that the CEHR will be responsible for tackling all forms of discrimination and ensuring all equality laws are enforced, including new laws dealing with discrimination on the grounds of age, religion and belief, and sexual orientation. Promotion of human rights will also be included within the CEHR's remit.

A government taskforce has been formed to determine how the body should function. At this stage, there is no clear timeframe for when the CEHR will become operational. It is expected, however, that the existing equality commissions will continue until at least 2006.

### **COMMUNITY POLL 1999**

Prior to the NSW State election in March 1999 the Australian Institute of Private Detectives commissioned a poll to be undertaken in 6 marginal seats, the results that were elicited were amazing to say the least, such as:- **Annexure 24**

	Yes	No
<b>Q Do you believe that all people in NSW should be treated equally before the law?</b>	<b>97%</b>	<b>3%</b>
<b>Q Do you think that you should be able to access that information for your defence?</b>	<b>94%</b>	<b>6%</b>
<b>Q Do you believe that Private Investigators Should be qualified?</b>	<b>95%</b>	<b>4%</b>
<b>Q Would you support properly trained, Independent investigators investigating Complaints against police officers?</b>	<b>90%</b>	<b>8%</b>



<b>Q</b>	<b>Would you support properly trained Independent investigators investigating Criminal matters on behalf of the police?</b>	<b>69%</b>	<b>29%</b>
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Although the poll was carried out in NSW there is no doubt that the figures would be applicable in all other states as it is obvious that the vast majority of the people in Australia are of the mind that everybody is entitled to a fair go and that includes matters before the courts and tribunals.

The benefits of having properly trained private investigators are many including government departments being able to have an independent investigations done thus removing any potential claims of complaints being covered up by departments and the public would be able to have total confidence of the proper handling of complaints. Additional information to the current poll is on our web site. [www.aipd.org](http://www.aipd.org) This might also apply to other area's such as State and Territory police forces outsourcing some investigations and complaints against police officers thus leaving the police to investigate serious criminal matters.

### **GENERAL ROLE OF PRIVATE INVESTIGATORS THAT SUPPORT OUR SUBMISSIONS TO HAVE ACCESS TO INFORMATION**

Although it is perceived by, we suppose the bureaucracy and the political arena, that private investigators may well be at the lower end of the social scale, and are insignificant in their position and role. Yet we all watch hundreds of movies depicting the chronicles of Private Detectives (PI's) ie Magnum PI, Marlow PI etc.

Members of the Australian Institute of Private Detectives also act in a number of roles particularly in private investigation work, for instance in relation to workers compensation and third party injury cases, as well as commercial areas such as process serving and debt collection and the repossession of goods and/or services.

We estimate that the number of our clients for which are industry acts on behalf of amounts in excess of 80,000 and the volume of business would be in the region of \$80m annually.

From the experience of the members of the Institute, we can say that prior to instituting legal proceedings, that the work of Private Inquiry and Commercial Agents, who are members of the Institute, includes investigative work preparatory to the institution of legal proceedings, or preparatory to defending legal proceedings. Such work is necessary in order to enable clients to decide whether they should institute legal proceedings, or to enable them to identify defences to legal action being mounted against them. Such work will include the identification of potential defendants and witnesses, the gathering of physical evidence, such as documents, the measurements of incident scenes and the photographic recording of evidence and incident scenes. It will also include the taking of witness statements.

By reason of the experience of our members we can say that prior to instituting legal proceedings most litigants require to identify what has actually occurred and the

identity of potential defendants and often while court proceeds, including preliminary discovery may assist, in many instances the court processes will not be sufficient to enable the client's legal advisors to provide appropriate and adequate advice as to whether legal proceedings should be instituted and if so, what form those proceedings should take and in what jurisdiction they should be instituted.

For example, where a client believes it's intellectual property is being misappropriated, preliminary discovery will not assist until it is determined whether the property is in fact being misappropriated, and in order to identify this, investigations may be required which involve requests to IT suppliers and technology carriers which require them to disclose personal information of their customers. If court proceedings were to be resorted to, then in our experience the party responsible for any misappropriation would be warned and would simply relocate their operations.

In the case of a relatively straightforward motor vehicle collision, the identification of potential witnesses may be crucial, yet that may again require third parties to disclose personal details of their employees to investigators. In the case of motor vehicle collisions and industrial incidents resulting in injuries, it is our experience that reliance upon the police or other authorities, such as New South Wales Work Cover Authority, to provide information that will enable a party to make appropriate decisions as to instituting, or defending, litigation, will often leave the party with insufficient, or incomplete, information as those enforcement bodies simply do not command sufficient resources to enable full investigations in all matters and, in any event, they do not act on behalf of private individuals under the Privacy Act 1988.

Where there has been a major incident, such as the Thredbo landslide or the January 2003 Bushfires in Canberra, a Coronial Inquest may be held and there will be investigations by bodies such as New South Wales Work Cover Authority, the fire authorities and the police. Such bodies are, we understand, '**enforcement bodies**' **6(1)** within the **Privacy Act 1988**, however those entities will not be investigating the incident on behalf of the persons who were injured in the incident, such as property owners and fire victims and our members having been involved in numerous coronial investigations into similar disasters we can say that in each instance additional investigations on behalf of our members clients were necessary in order for their interests to be fully protected.

The identification of potential witnesses and potentially exculpatory evidence, such as photographic evidence and evidence gained from the interrogation of computer and security systems, is, in our experience, crucial in many criminal prosecutions.

Our members have been involved in several thousand criminal prosecutions and in each one of these our clients would have been unable to mount an appropriate and full defence to the charges preferred against him, or her, without the assistance of our investigations as potentially exculpatory evidence would simply not have been identified and obtained. For example, potential witnesses who may provide exculpatory evidence are often, in our experience, only identified as the result of considerable investigation which will often require the disclosure by third parties of personal information concerning their employees.

It is our experience that our members are regularly engaged by property owners and other commercial entities to locate debtors in order that legal proceedings for the recovery of outstanding fees, such as rent, may be commenced. In order to locate



such persons a number of different potential sources of information may have to be resorted to.

These may include employers, past employers and real estate agents, however the disclosure of the addresses of debtors by Real Estate Agents and employers would be disclosure of personal information concerning the debtors and it is our understanding that such disclosure is now proscribed by the Privacy Act 1988. **Annexures 2 and 3**

## **ELECTORAL ROLL**

We note in an article in the Sun-Herald dated August 1<sup>st</sup> 2004 page 16, voting roles off limits by Philip Hudson, **Annexure 25**. It states here in that article that debt collectors and direct marketers will no longer be able to buy a copy of the electoral role after Federal Parliament banned the sale and commercial use of the role. The change was recommended by the Australian Electoral Commission backed by the Commonwealth Auditor General and Federal Privacy Commissioner and received unanimous support from the Parliamentary committee. It is most extraordinary to take away the right of a person to collect the money that might be rightfully owed to them or to have the matter tested in court and subject to a judicial decision. The following we believe is very interesting:-

## **BAD DEBTS**

The tax statistics tabled in Parliament, which have been extracted, see **Annexure 26**, illustrate the following:

According to figures obtained from the Taxation Statistics available on the ATO's website, the statistics for the 1996/1997 financial year show that 11,734 partnerships wrote off bad debts totalling \$127,046,188. In the 2001/2002 financial year, 10,979 partnerships wrote off bad debts totalling \$155,886,879. This equates to an average of \$10,827 in 1996/1997 compared to \$14,199 in 2001/2002 per partnership.

We now refer to the same category for companies. In 1996/1997, 33,535 companies wrote off bad debts totalling \$1,792,354,893. In 2001/2002, 40,086 companies wrote off \$5,823,415,533. This equates to averages of \$53,447 compared to \$145,273 per company for the 1996/1997 & 2001/2002 financial years respectively. It should be noted that over the six year period covered, a total of **\$22,370,070,873 (that's \$22.37 BILLION)** has been written off by companies alone. **Annexure 27**.

We now come to a most extraordinary situation, ie; as a result of these bad debts, companies and partnerships have been able to claim a deduction for these bad debts – not only as a tax deduction, but thus also reducing the amount of Company Tax payable to the Government (or Tax Department) in some instances. In addition, during the 2001/2002 financial year alone, **\$582 million (YES, MILLION)** from companies alone was **NOT** collected in the form of GST which would have flowed back to both State and Federal governments. How can the Government afford this?

We were unable to locate on the government Web site any statistics for the financial years prior to 1996.

The AIPD would like to point out some information gleaned from the poll that was conducted in March 1999 in six marginal seats, Bligh, Maitland, Manly, Miranda, Parramatta and Ryde.

	<b>Yes</b>	<b>No</b>
<b>Do you believe all people in NSW should be treated equally before the law?</b>	<b>97%</b>	<b>8%</b>
<b>Did you know that, at present, if you are a Defendant in court, that your lawyers cannot get access to all information held by Government Departments that could be used to assist your defence</b>	<b>14%</b>	<b>85%</b>
<b>Do you think that you should be able to access that information for your defence?</b>	<b>94%</b>	<b>6%</b>
<b>Do you believe that Private Investigators should be qualified?</b>	<b>95%</b>	<b>4%</b>
<b>Do you believe that the NSW Government Should regulate Private Investigators?</b>	<b>91%</b>	<b>7%</b>
<b>(If Yes) Which Government regulatory authority, do you believe, would be best suited to do this job:</b>		
<b>The Police OR</b>	<b>20%</b>	
<b>The Professional Standards Commission OR</b>	<b>34%</b>	
<b>The Attorney General's Department</b>	<b>43%</b>	
<b>Would you support properly trained, Independent Investigators investigating complaints against Police officers</b>	<b>90%</b>	<b>8%</b>
<b>Would you support properly trained, independent investigators investigating criminal matters on behalf of the Police?</b>	<b>69%</b>	<b>29%</b>

It can be seen from the poll that **77%** of the public do not want the Police to have any involvement in the Private Investigation Industry.

**91%** of the people believe that the NSW Government should regulate Private Investigators,

**95%** believed that Private Investigators should be qualified.

**94%** believed that Private investigators should have access to information for your defence.

**97%** believed that all people should be treated equally before the law.



**NATIONAL POLICE CHECKING SERVICE  
ACCREDITED AGENCIES LIST**

Current as at 12/12/2013

The agencies listed below are accredited, under MOU/Contract with the CrimTrac Agency, to access the National Police Checking Service (NPCS) through the CrimTrac Agency. This accreditation remains in place for so long as the agency appears on this list.

A "broker" providing a national police checking service for and on behalf of a customer or a person may issue a "document" on stationery that bears the "broker's" letterhead indicating the outcome of a national police check.

**GOVERNMENT AGENCIES**

		Jurisdiction
	<b>INTERNATIONAL (Alpha Order)</b>	
1	New Zealand Police (NZ Police & Qld Police Government Trial)	AFP
	<b>COMMONWEALTH AGENCIES (Alpha Order)</b>	
1	Aged Care Standards and Accreditation Agency Ltd	AFP
2	Attorney-General's Department	AFP
3	Attorney-General's Department (AusCheck)	AFP
4	Australian Customs and Border Protection Service	AFP
5	Australian Electoral Commission	AFP
6	Australian Nuclear Science and Technology Organisation (ANSTO)	AFP
7	Australian Postal Corporation	AFP
8	Australian Securities and Investments Commission	AFP
9	Australian Sports Commission	AFP
10	Australian Taxation Office	AFP
11	Civil Aviation Safety Authority	AFP
12	Commonwealth Superannuation Administration	AFP
13	Department of Defence (Defence Force Recruiting)	AFP
14	Department of Defence (Defence Security Authority - DSA)	AFP
15	Department of Finance and Deregulation	AFP
16	Department of Human Services	AFP
17	Department of Immigration and Citizenship	AFP
18	Department of Immigration and Citizenship (APEC)	AFP
19	Department of Industry	AFP
20	Department of Infrastructure and Transport	AFP
21	Department of Parliamentary Services	AFP
22	Department of Prime Minister and Cabinet	AFP
23	Department of Regional Australia, Local Government, Arts and Sport	AFP
24	Department of Social Services	AFP
25	Department of Sustainability, Environment, Water, Population and Communities	AFP
26	Department of the Treasury	AFP
27	Department of the Treasury (Royal Australian Mint)	AFP
28	IP Australia	AFP
	<b>STATE/TERRITORY GOV'T AGENCIES (Alpha Order)</b>	
1	ACT Education and Training Directorate	AFP
2	Australian Health Practitioner Regulation Agency	VIC
3	Brisbane City Council	QLD
4	City of Holdfast Bay	SA
5	Curtin University of Technology	WA
6	NSW Businesslink Pty Limited	NSW
7	NSW Department of Education and Communities	NSW
8	NSW Health Administration Corporation	NSW
9	NSW Rural Fire Service	NSW
10	NSW State Emergency Service	NSW
11	Office of Regulatory Services - ACT Department of Justice and Community Safety	AFP
12	Office of the Childrens Guardian	NSW
13	Roads Corporation of Victoria (T/a VicRoads)	VIC

14	SA Department for Communities and Social Inclusion	SA
15	SA Department of Premier and Cabinet	SA
16	South Australian Fire & Emergency Services Commission	SA
17	Teacher Registration Board of Western Australia	WA
18	Teachers Registration Board of South Australia	SA
19	The Corporation of the City of Adelaide (T/a Adelaide City Council)	SA
20	Transport for NSW	NSW
21	Vic Business Licensing Authority	VIC
22	Vic Department of Education and Early Childhood Development	VIC
23	Vic Department of Health	VIC
24	Vic Department of Human Services	VIC
25	Vic Department of Justice	VIC
26	Vic Department of Justice - Working With Children Check Unit	VIC
27	Victorian Institute of Teaching	VIC
28	Volunteer Marine Rescue NSW	NSW
29	WA Department for Child Protection - Working With Children Screening Unit	WA
30	WA Department for Child Protection & WA Department for Communities	WA
31	WA Department of Education	WA
32	WA Department of Health	WA
33	WA Department of the Attorney General	WA
34	WA Department of Transport	WA
35	WA Department of Corrective Services	WA

#### **BROKER AGENCIES (Alpha Order)**

1	Accredited Tutor	VIC
2	ACG National Pty Ltd	VIC
3	AIM Screening Pty Limited	NSW
4	Australia Wide Locum Placement Pty Limited	SA
5	BRC Recruitment	NSW
6	Catholic Commission for Employment Relations	NSW
7	Cloak Investigations Pty Ltd (T/a Employment Screening Australia)	QLD
8	Corpsec Pty Limited	AFP
9	CrimCheck Limited	VIC
10	CV Check Pty Ltd	WA
11	Employrite Pty Ltd	VIC
12	First Advantage Australia Pty Ltd	NSW
13	Fresh Fields Aged Care Pty Ltd	WA
14	GlobalX Information Services Pty Ltd	QLD
15	Healthcare Australia Holdings Pty Limited	NSW
16	Impartial Decision Support Pty Ltd	NSW
17	InterCheck Global Pty Ltd	VIC
18	Key Vetting Services Pty Ltd	AFP
19	Medic Oncall Pty Ltd	VIC
20	Mercury Search and Selection Pty Ltd (T/a fit2work.com.au)	VIC
21	National Crime Check Pty Ltd	SA
22	NEC Australia Pty Ltd	VIC
23	People Check Pty Ltd	NSW
24	Personnel Action (T/a Employ)	NSW
25	PPP Business Solutions Pty Ltd	NSW
26	Precise Background Services Pty Ltd	VIC
27	Premier Protection Agency Pty Ltd	NSW
28	Pro Active Strategies Pty Ltd	VIC
29	QPL Limited	NSW
30	Risk Group Services Pty Ltd	VIC
31	Risk Solutions Australia Pty Ltd (T/a WorkPro)	VIC
32	Rob Wallace Enterprises Pty Ltd (T/a WHR Solutions)	VIC
33	Ruswin Vetting Services Pty Ltd	QLD
34	The Personnel Risk Management Group Pty Ltd	VIC
35	Verify Holdings Australia Pty Limited	NSW

#### **NON-GOVERNMENT ENTITIES (Alpha Order)**

1	ACON Health Limited (T/a ACON)	NSW
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2	Adelaide Community Healthcare Alliance Incorporated	SA
3	Allowance Incorporated	NSW
4	Amana Living Incorporated	WA
5	Anglican Retirement Villages Diocese of Sydney	NSW
6	Anglicare Canberra and Goulburn	AFP
7	Anglicare SA Incorporated	SA
8	Australian Red Cross Society	VIC
9	Blue Stone Medical	QLD
10	Bundaleer Care Services	NSW
11	Bupa Care Services Pty Limited	NSW
12	Calvary Home Care Services Limited (T/a Calvary Silver Circle)	VIC
13	Cancer Council NSW	NSW
14	Career Employment Australia Incorporated	QLD
15	Catholic Church Endowment Society Incorporated, Archdiocese of Adelaide	SA
16	Community Support Incorporated & SA In Home Care Incorporated	SA
17	Dial-an-Angel	NSW
18	Dixon Appointments Pty Ltd	VIC
19	House With No Steps	NSW
20	Illawarra Retirement Trust	NSW
21	Ipswich Yupi Program Inc (T/a Challenge Employment & Training)	QLD
22	Life Without Barriers	NSW
23	Linfox Proprietary Limited	VIC
24	Lutheran Homes Incorporated	SA
25	Meals on Wheels (S.A.) Incorporated	SA
26	Mission Australia	NSW
27	Origin Healthcare Holdings Pty Ltd	VIC
28	Programmed Maintenance Services Limited	VIC
29	Qantas Airways Limited	NSW
30	RNS Group Pty Ltd	QLD
31	Scripture Union of South Australia Incorporated	SA
32	Shepparton Retirement Villages Inc. (T/a Shepparton Villages)	VIC
33	Skill Centred Queensland Inc.	QLD
34	Southern Cross Care (VIC)	VIC
35	Southern Cross Community Healthcare Pty Ltd	NSW
36	St John Ambulance NSW	NSW
37	St John Ambulance SA Inc	SA
38	Sydney Anglican Home Mission Society Council (T/a Anglicare N.S.W.)	NSW
39	The Baptist Union of Queensland (T/a Carinity)	QLD
40	The Northcott Society (T/a Northcott Disability Services)	NSW
41	The Salvation Army (Australia Eastern Territory)	NSW
42	The Sir Moses Montefiore Jewish Home	NSW
43	The Smith Family	NSW
44	Suncare Community Services	QLD
45	The Uniting Church in Australia Property Trust (N.S.W.) (T/a Wesley Mission)	NSW
46	The Uniting Church in Australia Property Trust (Q.) (T/a Blue Care)	QLD
47	The Uniting Church in Australia Property Trust (Q.) (T/a Wesley Mission Brisbane)	QLD
48	The Uniting Church in Australia Property Trust (S.A.)	SA
49	The Uniting Church in Australia Property Trust (Victoria)	VIC
50	The YMCA of Victoria Inc	VIC
51	TNT Australia Pty Ltd	NSW
52	Tricare Ltd	QLD
53	UCA Assembly Limited (T/a Frontier Services)	NSW
54	Uniting Church Homes	WA
55	Wridgeways	VIC