

DEBT RECOVERY IN NSW

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DEBT COLLECTION / PRIVATE INVESTIGATOR REFORM **SUMMARY**

Facts

1. Debt collection requires **Mercantile-Commercial Agents** (debt collectors, repossession agents, process servers) to work for both Government and private sector alike.
2. **Mercantile-Commercial Agents** are also required to be licensed as **Private Investigators** as the law requires this for debt collectors/repossession agents to trace/locate debtors and conduct enquiries about debtors and related third parties. Therefore it is vital that government law- makers understand this and that these two industries are and have always been, inter-related. Yet the NSW government has incorrectly bundled them under the Security licensing regime 'SLED'. Commercial agents and Private Investigation work has no relationship with the Security industry at all. This needs to end and licensing / control reverted to Attorney Generals Department or Fair Trading. ICAC report of 1992 also stipulated Police should have nothing to do with the Private Investigation/Commercial Agents industry.
3. State licensing has failed **debt collection/mercantile-commercial agents and private investigators** in every state of Australia and provides no special benefits of any sort by a person or company holding a licence. The licensing regime and fees are essentially a fraud as well as unnecessary invasion of civil liberties requiring them to be fingerprinted for no valid reason. One may as well fingerprint accountants and lawyers?? What is the difference?? Fingerprinting should be ceased and such records destroyed.
4. **Mercantile-Commercial Agents / Private Investigators** require controlled access to so called '**confidential information**' (i.e. special exclusion from the Privacy Act/s similar to law enforcement provisions) in order for them to conduct their occupations:- locate debtors, locate witnesses, locate goods to be repossessed by law, locate parties to

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mediate disputes and for the Court process to be available to the private sector and government, not only for debt collection but all other matters of dispute, including statutory schemes such as Worker's Compensation, CTP, Insurance claims, and also the criminal jurisdiction as presently the law prevents the locating of witnesses and potential witnesses and property. At present no-one can be located in Australia for any purpose, other than by law enforcement agencies who are exempt from the Privacy Act/s.

5. Government needs to support and adopt a proper industry self-regulated integrity scheme to ensure legal compliance by **Mercantile-Commercial Agents / Private Investigators**, standards and ongoing improvement. This is easily achieved by adopting the *National Code of Practice for Investigators and Mercantile Agents in Australia 2008*.
6. **Mutual recognition needs to be properly addressed** as Commercial Agents/Private Investigators cannot cross state borders to complete their duties.

DEBT COLLECTION / PRIVATE INVESTIGATOR REFORM SOLUTIONS

1. **Mercantile-Commercial Agents / Private Investigators** need to be removed from the NSW Police licensing regime 'SLED' (which was founded for the Security Industry) and licensing to revert to the Attorney General's Department as previously or come under the Department of Fair Trading.
2. **Mercantile-Commercial Agents / Private Investigators** require access to so called 'confidential information' in order to be able to perform their occupation and duties, such as to locate debtors, witnesses that are needed to establish the facts of a debt, conduct enquiries with debtors about alleged debts and with related third parties. This is vital as presently no-one can be located for legal or Court matters. 'Controlled Access' to confidential information needs to be introduced via a Practitioner Certification system with government providing the information to the Certified Agent.
3. In order to facilitate 'controlled access' to information as well as ensuring industry standards and all legal expectations are met, **Mercantile-Commercial Agents / Private Investigators** need to be registered under a **National Certification Scheme** which is a component of the already established '*National Code of Practice for Investigators and Mercantile Agents 2008*', first published in 2005. All government has to do is to support and adopt this industry self-regulated integrity scheme to ensure legal compliance by Mercantile-Commercial Agents/Private Investigators. The Code is an extensive document and offers the following components which presently are (at present) not functional in the industry across Australia due to it presently being a voluntary application and not enforceable:-

Components of CoP

1. Is essentially a single document containing the **present laws, compliance and educational standards and business standards** already in place in Australia. (Includes ACCC Guidelines on Debt Collection standards); Objectives of the CoP (See pages 18-21 of CoP, items 25-37) www.aipd.com.au);
2. Provides clients, the public and government with integrity assurance via a '**Practitioner Certification**' requirement for all commercial agents/private

investigators to meet. Practitioners must apply for a 'National Practising Certificate' renewable annually. The CoP allows for industry representative bodies to maintain their autonomy and representation for their members, including ongoing training and dispute resolution. Industry representative bodies must submit to the Code and be CoP registered IRBs. (Industry Representative Bodies). Refer: **Facilitation Provisions – Certification** - page 29-30 of CoP., items 53-58)., Also pages 53-58 of CoP., re: *Conduct compliance*;

3. The AIPD is the creator and Administrator of the CoP and issues **Practising Certificates** to industry practitioners, but only upon receiving verified applications from practitioners via their IRB. Application information is verified by AIPD and if competency evidence is met, then the industry member is issued with a National Practising Certificate. **Facilitation Provisions – Certification** - page 29-30 of CoP., items 53-58; Also pages 31-33 of CoP;
4. CoP incorporates a **CPD Scheme** (Continuing Professional Development points scheme) for practitioners to maintain their National Practising Certificates. Refer page 30 of CoP;
5. CoP includes a **3-tier Dispute Resolution Scheme (DRS)** (an escalating process) to address and mediate ALL issues and disputes between all stakeholders. This includes investigation of any impropriety by a CPI/CPMA. (*Certified Practising Investigator/Certified Practising Mercantile Agent*)Also pages 40-43 of CoP;

CoP CONSULTATION INFORMATION

The National Code of Practice was first drafted in early 2005 by the AIPD due to the void in industry standards and compliance guidelines as well as inconsistent compliance across the industry relating to legal operating standards. Further, to unite the industry to achieve a sustainable and professional industry.

The Code initially had an OH&S and IR focus as there were very few mechanisms available to facilitate change and compliance across industry due to the varying state licensing jurisdictions which actually impeded progress.

The AIPD initially sought support from the then **NOHSC in mid 2004** which at that time held to power to investigate industries nationally to ensure OH&S compliance and whose other role was to promote OH&S standards across industries. The NOHSC supported our draft industry Code of Practice (in writing) and availed their assistance. A formal public consultation process was applied in **three 3 – separate stages, each stage consisting of 3 months**, inviting all industry stakeholders to contribute to the Code of Practice draft and make submissions in writing directly to the AIPD or via our website where the consultation periods and 'draft CoP was advertised.

Direct written consultation was also conducted in early-mid-late 2005 by the AIPD with every State Industrial Relations Minister in Australia and the Federal Industrial Relations Minister. Their submissions were noted and they also referred the consultation inviting to their state OH&S Authorities to comment and make any submission. The AIPD corresponded with every OH&S Authority in relation to the CoP and each Authority was supportive and commended the AIPD industry initiative to develop a CoP for the industry. Written requests for submissions were also sent to every major insurance company in Australia bearing in mind approximately 70% of

all investigation work is insurance related., this included WorkCover Authorities that operated the

Statutory Workers Compensation Schemes; the Statutory CTP Scheme Insurers; the Major Banks and industry bodies and industry members. Consultation was also conducted with the ACCC and ASIC.

At the completing of the Stage 3 Consultation period in in October 2005, all submissions were considered and the Code was ratified by the AIPD Committee and published on the AIPD website on 16th December 2005.

The CoP underwent a ‘Review’ in early 2008 with two separate 2 month periods of public consultation. Consultation with State licensing bodies was also conducted however they have never elected to adopt the Code.

Some changes were subsequently made to the Code document and the revised CoP published on 15th September 2008.

Access to Information Registration Number

‘Certified’ practitioners to be issued with a dedicated national **Access to Information Registration Number (AIRN)**. **Searches to be conducted by assigned Government body** (on behalf of CPMA/CPI) and fees charged accordingly per category search. Access to be through AIPD portal only, to maintain integrity, tracing and auditing., (similar to say CITEC Confirm operating in Qld).

REDUCE RED TAPE for debts

The process to collect a proven debt need to be streamlined and the present number of required Court/legal processes reduced.

REVIEW MUTUAL RECOGNITION

State licensing needs to have provision for certified/licensed Mercantile Agents/Private Investigators to be able to conduct cross-border activities without having to be additionally licence in another state, where the duties are not of a regular nature. If such duties entail regular work in another state, then the practitioner would need to apply for a licence in that state.

Regards,

John Bracey