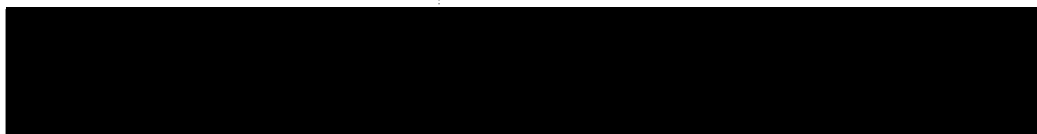


## DEBT RECOVERY IN NSW

Name: Name Suppressed  
Date Received: 16/05/2014

*Partially Confidential*

# New South Wales Legislative Assembly Enquiry into Debt Recovery In NSW



1.

**Improvements to recovering bad debt for small businesses**

The current debt recovery laws in New South Wales can be both time consuming in terms of the administration time and daunting, to those in small business going through this process; it's not a user friendly bureaucracy.

In NSW, you may use the Small Claims Division of the Local Court, for claims of less than \$10,000, after a letter of demand, the courts and or agencies such as Law Access tend to offer advice, which is guarded words tries to steer claimants towards giving up on their small claims rather than go through the expense of a solicitor. In my recent experience I had to go back several times to the local court house, to clarify various points on the Statement of Claim form, before it could be processed.

The process should have a simple concise plain English how to claim process that can be obtained online printed out and guides you through the process of taking action against a Sole Trader, Company or a Trust which can then be taken to the local court house and the necessary fee paid.

Each step in the small claims process should be clearly defined with time durations and how to escalate the claim to the next stage, if necessary.

Also as I have mentioned in the Statement of Claim process, many outstanding debts to creditors involve third party goods ,these items should not become embedded items and there should be no liability incurred by the plaintiff on entering the creditor's premises and removing these items, if they can prove they were used in the goods and services provided.

## **Statement of Claim**

The processing time of a Statement of Claim should be shortened from 28 Days to 21 days, as by the time a small business gets to the stage of lodging a Statement of Claim, they would have already been without payment for 90 to 120 days, if they have tried to resolve the matter by calling the creditors accounts person and issuing a Letter of Demand. A Letter of Demand can be sent through the post with a request for a signature, but if the creditor chooses he can simply leave the letter at the post office and refuse to sign for it. On top of this most invoices to creditors would involve goods or services provided by a third party, these suppliers are not going to listen to any small talk of when they may get paid and once again the plaintiff must pay these charges they have incurred in providing a service to the creditor, who is not willing or refuses to pay and the right to enter a creditors premises and remove these items, should be made as easier proposition.

2.

Another area of concern with the Statement of Claim is that for an additional fee you can get the document served on an individual or a company director at their home address by process server, but a process server cannot serve this on an owner or company director at their registered business address. In our case I had to process server and deliever the Statement of Claim on our client, I could clearly see how if there had been some level of acrimony in dealings with the defendant, this could clearly lead to a heated exchange or an assault in extreme cases. It would be more preferable to amend this current legislation on the serving of documents to enable a process server( Sheriff), an independent individual to serve the necessary paperwork for a reasonable fee. Again in the serving of the documents the plaintiff must sign an Affidavit of Service, in our case ( See attached document

2) I just left the document with the receptionist, who then brought it to the attention of the director of the company, so I was unable to get a signature of the person accepting the documents and I simply signed the Affidavit myself. If a creditor chooses to be difficult and state they have not received the document, it will be their word against mine and this is a further reason I believe a Sheriff or an independent body should deliver the Statement of Claim.

## **The Disappearing Creditor**

A creditor who tries not to be found by moving or changing company name in such cases there needs to be a clearly defined method as to the next steps to be taken to pursue such people, again the onus falls on the plaintiff to do all the foot work to try and find out what's happened. We had one case last year where we were chasing a company run from the family home, in doing some further research and obtaining a company extract from ASIC on his details ( See attached Document 1), the registered address still appeared as the company's primary address, however the director had separated from his wife who kept the family home and he had reportedly moved to Hawaii, but we later found out, that he had moved a mere suburb away from his ex-wife. We lodged a report with ASIC to advise them that the registered address on his company profile was no longer his primary address, there are heavy fines for this offence, however ASIC made a couple of telephone enquiries, no doubt to the director who would have lied that this old address was still current and ASIC had no resources on the ground that could go out there and verify, what we found on visiting the premises ourselves.

It shouldn't be left to the plaintiff to prove where a creditor lives, on a Garnishee Order for Debts for example the plaintiff must provide the creditors banking details, and this is not always easy information for a small business owner to obtain.

I believe a Court Order for Discovery should override the Privacy Act; this alone would force Government Departs and Private Institutions to comply and hand over details to the person making a claim.

Such Organisations who could give up to date information on an individual, would include

- Local Councils
- Sydney Water

3.

- Electricity Companies
- Gas Companies
- Road and Maritime Services
- Department of Human Services
- Banks
- Australian Tax Office
- ASIC
- Passport Office

## **In Conclusion**

I believe there does need to be an overhaul of the current legislation to make the process more assessable user friendly to small business, the relevant process needs to lay out in a clear concise format that does not make it daunting for small business to navigate through and without the expense of going through a Lawyer or solicitor.

Government Departments should be more accessible and transparent in helping small business owners identify, shonky and dubious operators, by making Court Orders for Discovery easier to obtain, so that such operators can be quickly identified and put out of business.

Local court houses should be made to be more user friendly and accountable for the advice they give to the general public and not simply geared to deal with the legal profession and more resources should be given to such organisations as ASIC, to investigate irregularities with business listings and addresses.