

DEBT RECOVERY IN NSW

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The Chair,
Committee on Legal Affairs,
Parliament House,
Macquarie Street,
Sydney NSW 2000

Dear Committee Members,

I would first like to give a brief background of myself.

I have been involved in Civil Litigation for close on 50 years.

I have owned and operated the largest Debt Collection Agency in the Southern Hemisphere.

I developed and owned the first Civil Litigation software for the industry.

This was installed in over 200 agencies throughout Australia. It was also installed into most all banks, credit unions and finance co's operating in Australia.

I was the recipient of The NSW Small Business of the Year and was the Runner up of the Australian Small Business of the Year.

I have seen over the last 50 years numerous changes made to the debt recovery system. Not all of them for the betterment of society.

The issue is at the moment that if an individual incurs a debt the methods open to collection are cumbersome, expensive and ineffective. There needs to be a balance.

How can this be achieved?

The initial process of collection is sound, ie the issuing of the summons and the entering of Judgment

The current post Judgment methods need refining.

(a) Writ of Execution.

Our experience with the Writ is that it is a waste of money to even contemplate going down this path unless the defendant owns a retail shop which is open during the hours of 9am -5pm.

A Sheriff does not get out onto the road until normally between the hours of 9am - 5pm. This is when the normal person is at work. In order for this to be effective Sheriffs need to operate outside the hours of 9am -5pm. They also need to operate on weekends for the writ to be effective.

(b) Examination Summons.

In our experience around 70% of the time the defendant does not turn up to be examined. A Warrant is issued for the defendants arrest and the arrest warrant is executed between the hours of 9am-5pm. The defendants are predominantly at work and therefore the majority of time the warrant is not executed.

(c) Garnishee

This is the most successful process available to the Plaintiff. If a defendant's place of employment can be located then this by far is the most successful process in the collection of a debt.

The issue with this however is being able to establish the defendants work. This can be difficult to obtain.

What can be done to improve the process?

Other than the sheriff working outside of 9am – 5pm and or weekends then there need to be a number of processes put into place.

1. The serving of summonses. (Statement of Claims)

When a process server serves a summons (SLC) the current scenario is that there is a fixed fee. However the process server can often charge more than the court allows the plaintiff to charge. I believe this should be changed so that the cost of serving the summons (SLC) can be added on to the debt. This would align with the principle utilised in the other States and Territories in Australia. Take for example if a Process Server has to serve a summons (SLC) in Bombala. There are no process servers in the area, the nearest process server is located 100 kilometres away. They will serve the summons (SLC) but at a cost of \$60 plus 60 cents a kilometer. This can cost the plaintiff another hundred dollars which is non recoverable. This needs to be looked at and changed to be in line with the methods of other States and Territories.

2. The Writ of Execution.

I believe that the sheriff must work hours other than the standard 8am – 6pm so that they can execute the serving of the Writ on the defendants. Sheriffs must work after hours to allow for people who are working and weekends when most people are at home. If this means that the cost involved must increase so be it. At least the plaintiff is having some success in the execution of the writ.

3. Locating defendants.

Within the Local Government Act the cost of locating an individual can be added on to the debt providing the cost is fair and reasonable. I believe that this should also be included in the Civil Procedure Act.

4. Examination Summons.

More and more defendants are not turning up to the Examination hearing. When a Warrant of Arrest is issued it is ineffective as the sheriffs again attend the defendants premises between the hours of 9am – 5pm when the defendant is at work.

Therefore the Examination Summons is ineffective. To ensure that it is effective the Warrant of Arrest must be issued other than the normal working hours. I realise that the defendant is not able to be examined until the courts are open but if he has to spend time in the cells until the next day to show his contempt for the court process then so be it.

At the moment the court processes are treated with contempt and the defendants are not being punished for their actions.

Summary.

The major issue is that the Post Judgment options available to a Plaintiff do not have the teeth to be effective. If we were able to ensure that the defendant attended the Examination hearing then we could get his place of work and use a work garnishee as a means of ensuring the debt was paid. Unfortunately through the processes being treated with contempt by the defendant and the Warrant of Arrest not being effective the Plaintiff is left with no alternatives.

I hope the above is considered as a meaningful contribution.

Yours Faithfully



Ron Peters
Managing Director