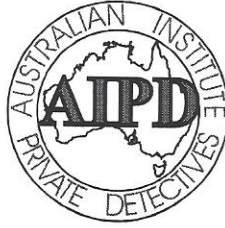


**Submission
No 10**

DEBT RECOVERY IN NSW

Organisation: Australian Institute of Private Detectives
Name: Mr John Bracey
Position: President
Date Received: 16/05/2014



Australian Institute of Private Detectives

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16/5/14

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

Attention:- Bryan Doyle.

Dear Sir,

Inquiry into debt recovery in NSW.

We apologise for the delay and the late submission to the Legal Affairs Committee in relation to the above inquiry.

Due to the past submissions that we have done to the New South Wales government over the years in relation to the CAPI Act and Regulations which were completely ignored and most of our members believed that we were wasting our time making any submissions to another government committee or Inquiry.

Only this morning I was fortunate to visit the Electoral Office of Jonathan O'Dea MP for the seat of Davidson who happens to be my local member, he then informed me that he was on this inquiry and I had a long discussion with him and gave him some notes.

He, perhaps the best way to phrase this is he insisted that I put in a submission to the Committee on Legal Affairs and in particular to the Inquiry into Debt recovery in New South Wales.

On the 4/6/13 I wrote to The Hon Mike Baird MP who was the then Treasurer in the New South Wales government, I enclose a copy of such a letter and reply which referred to State Council Question re GST and Dept collection.

You will notice in the above paragraph letter, that I mention "Bad Debts" and "Statistical information" information which I now enclose with this submission.

Australian Institute of Private Detectives Ltd ABN 28 054 902 000

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It will be noted in the letter to Mike Baird MP of the 4/6/13 that I mention that there are at least five procedures to arrive at a judgement debt that at least another four processes for what is known as enforcement if the courts then decide that bankruptcy is in order the person or company attempting to collect the debt has to pay at least \$12,000 to the trustee in bankruptcy on top of the court costs and the five processes and a further four processes including the amount of the debt to what was owed.

The main reason that it is difficult to collect debts is because amongst other things it is virtually impossible to locate a debtor because both the Federal and state Privacy Acts prohibit the locating of a debt or a witness.

You may not be aware that the Australian Institute of Private Investigators (AIPD) is the national body representing Commercial Agents and Private Investigators in Australia it also administers the National Code of Practice for Private Investigators and Commercial Agents in Australia.

In relation to the statistical information I would like to add to that information the following as a matter of interest:-

The New South Wales Roads and Maritime Services have published that there are approximately 4,000,000 motor vehicles registered in New South Wales.

The NRMA indicate that the average number of kilometres travelled per vehicle is about 20,000 km per annum.

The New South Wales police have published that there are about 161 deaths on the road due to speeding in a year.

So if we multiply 4,000,000 x 20,000 and divide by 160 we arrive at a figure of one death on the road for every 500,000,000 km travelled.

Surely this is world's best practice.

I pointed out to Jonathan O'Dea this morning that I think it would be extremely beneficial to the committee on the above Inquiry into Debt recovery to perhaps have a face-to-face meeting with at least 2 to 3 commercial agents who spend 100% of their time allegedly trying to collect debts, this might be extremely beneficial for the committee members who can then glean perhaps some solutions to the problems.

In other words if you want your teeth attended to you don't go to an accountant you go to a dentist so the same thing basically applies if you want information in relation to debt collection I would suggest that you speak to his people and get the answers which would then potentially translate into making it a lot easier to collect the debts and thus acquire more funds from the Federal government through the collection of GST and to make the collection cost effective and affordable.

I also pointed out to Jonathan O'Dea that perhaps somebody from your committee, contact John Bracey he will then give you the information as to how you can get the bad debts up-to-date for 2013 from the tax department and as we did for the information that was included in our bad debts which relate to the year 2002, we have

anticipated that the bad debts in 2013 would property amount to about \$130 billion which means that the company tax has not been paid nor has the GST being paid.

I would be more than happy to facilitate such a meeting and gather the expert people in relation to the collection of debts.

As I mentioned to Jonathan O'Dea and previously in this submission, the real problem is the location of Debtors and the enormous cost to the courts of the five processes and the further four processes for enforcement, the costs are often prohibited and the time procedure is enormous and most companies decide not to bother as the time and the costs are virtually prohibitive.

There needs to be very serious thought given to Commercial Agents and Private Investigators to have access to information that is required to do their job, that is to locate debtors and witnesses so that the court procedure can properly take place in other words if you called in a carpenter to give you a quote on putting some cupboards up in the kitchen and he said yes he could do the job it will cost about \$900 and you then asked him when could he start and he said tomorrow and you said that's fine, however you are not allowed to use a hammer and nail screw or saw, the carpenter then says how they hell do you expect me to do my job when you take the tools of my trade away from me. This is exactly what has happened in the debt collection industry.

Back in 1992 in our submissions and draft Private Investigators bill we said that access should be made available through the AIPD and each Certified Practising Investigator or Commercial Agent would have a number and a code and the AIPD would access that information on behalf of the Commercial Agent or Private Investigator and a trail would be established and any person who had no right or authority or no real purpose to access that information would be immediately suspended and/or have his/her licensed revoked for breaching the Code of Practice for Private Investigators and Commercial Agents in Australia, the Code of Practice can be accessed on the AIPD website which is www.aipd.com.au.

We thank you for being able to make this submission and we hope that somebody will contact us and we look forward to meeting the members of the committee and giving them a first hand account so that are experts in debt collection can answer any of the questions that the members of the committee might have in relation to this inquiry.

Yours faithfully,


John Bracey

4/6/13

The Hon Mike Baird MP
Unit 2, 2 Wentworth Street
Manly
NSW 2095

Dear Mike

Re:- State Council Question re GST & Debt collection

Further to the State Council General Meeting 1/6/13 at Tumby Umbi on the Central Coast and the question that I asked in relation to GST.

I noted that the Premier of NSW Barry O'Farrell mentioned in his address to the assembly that there were some difficulties in relation to the state finances because of the falling GST receipts which was causing financial difficulties to the New South Wales government.

I now enclose a typewritten summary relating to bad debts, the information was gleaned from the statistics tabled in the federal parliament from the ATO, particular notice should be applied to the last paragraph where the bad debts had been written off from 1997 in the amount of \$1.79 billion and in 2002 there was a figure of \$5.823 billion.

Unfortunately I have not updated the figures but it would be a simple exercise to do and I'm sure your staff in treasury would have no problems in acquiring the relevant information on an updated basis.

I also enclose statistical information that was gleaned from the Roads and Maritime Authority website and the figures relate from the 1/10/11 231/10/12 and it will be noted that there were 157,621 fine default suspensions, we presumed that these were both licenses and registrations.

As I pointed out at the State Council meeting that the New South Wales government has laid down by law procedures for collecting or attempting to collect debts and that is at least five procedures to arrive at a judgment debt and then at least another four processes for what is known as enforcement and if the courts then decides that bankruptcy is in order the person or company attempting to collect a debt has to pay at least \$12,000 to the trustee in bankruptcy on top of the court costs and the five

processes and a further four processes and including the amount of the debt to was owed.

The message that this obviously sends to the people and companies that are owed money is you either write a debt off as a bad bet and if you are an accrual accounting company you claim the GST back the following year, however if you are a cash accounting small business employing up to 200 people you do not even waste time spending money chasing a bad bet you just don't bother collecting it thus not paying GST.

On the other hand the New South Wales government might give consideration to the State Debt Recovery Office being able to collect debts on behalf of companies and the general public, this should not be a too hard a task as the subject debt was not paid they can simply cancel their registration and licenses until the debt was paid this seems a fair and equitable situation as everybody should be equal before the law or on the other hand are our government departments above the law and are not accountable to the laws of the state in relation to collecting debts.

I have not fully looked at the legality of the State Debt Recovery Office being able to cancel licenses and registrations for the nonpayment of debts, however if they are above the law and do not have to prove the debt and get a judgment debt through the courts as other companies and individuals have to do then one can only consider that the government is sending a message to government departments that they are above the law and thus effectively releasing to every government department potentially a notice that they are above the law and they cannot be prosecuted for any potential offense, I hope this is not the case and I hope that the government will not send that message to government departments.

I'm more than happy to meet with you and/or any of your senior officers to discuss this potential problem and I can be contacted on the above numbers as I believe that this is a very important issue and for the finances of the state and that everybody should be equal before the law.

Yours faithfully,

John Bracey.

Attachments:- Bad debts, Statistical information.



Treasurer
Minister for
Industrial Relations

Reference: EA 315594

Mr John Bracey


31 JUL 2013

Dear Mr Bracey *John*

Thank you for your letter of 4 June 2013 about reductions in income tax and GST revenue arising from bad debts incurred by businesses.

I am grateful for your effort in conducting this research. We need more people like you, who are willing to put work into developing new ideas to help improve the New South Wales economy.

While bad debts are undoubtedly an important business problem, I do not believe it would be appropriate to enforce bad debts through the State Debt Recovery Office (SDRO). Debt enforcement requires a judgement about the validity of claims for monies owed. This is a function that is appropriately performed by courts, not the SDRO. Moreover, increasing penalties for business failure, for example by cancelling licences, could also act to discourage entrepreneurial activity.

Like you, I believe that the cost of court proceedings should be kept as low as possible and should provide resolution of disputed debts as quickly as possible. I have passed a copy of your letter to the Attorney-General, the Hon. Greg Smith, to address your concerns about the current costs of pursuing bad debts.

Thank you again for taking the time to write. From a purely fiscal point of view I believe there is merit in your proposal, but viewed from a broader perspective I hope you will agree with me that it is necessary for courts to determine the validity of disputed claims.

Yours sincerely


MIKE BAIRD MP

Happy to discuss.



Australian Institute of
Private Detectives

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23/9/13

Community Relations Unit
NSW Department of Attorney General & Justice
Locked Bag 5111
Parramatta
NSW 2124

Dear Sir,

Re Matter 13/005011

I refer to my letter to the Hon Mike Baird MP Treasurer dated 4/6/13 and his reply to me dated 31 July 2013 and your e-mail dated 5/09/2013, "headed your letter to the Treasurer (Matter 13/005011)".

As can be seen from my letter of the 4/6/13 I made reference to the State Council meeting on the 1/6/13 at Tumbi Umbi and in particular the problems with the falling GST receipts which was causing financial difficulties to the New South Wales government.

It would also be noted that during Premier Barry O'Farrell's address to the State Council meeting he said that his was a government who listened to the people. in light of what is now taking place and from your e-mail dated the 5/09/2013, it would appear that what the Premier said was in fact not necessarily the truth.

The reason for my statement in the above paragraph is that in your e-mail dated 5/09/2013 and I refer specifically to your second paragraph in your e-mail and I quote as follows:-

"Your concerns about current process and costs have been being carefully noted. The Department of Attorney General and Justice, together with the Better Regulation Office, has been considering the effectiveness and efficiency of existing mechanisms for debt recovery in NSW. In doing so, the Department investigated stakeholder's concerns about the cost and complexity of current processes particularly court debt recovery processes and issues with the enforcement of court judgments. The government is currently considering

measures to best address the issues that have been identified during this exercise".

For your information Private Investigators and Commercial Agents come under the Commercial Agents and Private Inquiry Agents Act of 2004, also for your information Commercial Agents are directly involved in collecting debts on behalf of thousands of clients and are also directly involved in the process of executing court orders for the repossessions of goods, often motor vehicles.

Commercial Agents are also responsible for executing subpoenas in the service of process for matters before the civil and criminal jurisdictions on behalf of legal firms and also solicitors acting on behalf of government departments.

Inquiries I have made just recently indicate that the Better Regulation Office ceased to exist on the 4/9/13, which coincidentally is one day prior to your e-mail to me on the 5/09/2013 and as per your e-mail I would be extremely grateful for a copy of the departments findings and all stakeholders concerns about the cost and complexity of the current processes, particularly court debt recovery processes and issues with the enforcement of court judgments and it would also be most helpful if you could send me the information which the government is currently considering measures to best address the issues that have been identified during this exercise.

I apologise for the delay in replying to your e-mail but I have been totally shattered in that the above organisation which is the Australian Institute of Private Investigators (AIPD) which if you visit the website would indicate to you that the above organisation looks after the interests of both Private Investigators and Commercial Agents was not only not consulted in relation to the review conducted by both the Attorney Generals Department and the Better Regulation Office (now disbanded) but also was not informed that there was a review taking place, suffice it to say that as I understand from your e-mail dated 5/09/2013 that in addition, following the review of the enforcement functions of the Sheriffs officers, the Department of Attorney General and Justice is holding discussions with the State Debt Recovery Office to establish the best approach to improve debt recovery.

In relation to the State Debt Recovery Office it is our understanding that there has never ever been a process by which the State Debt Recovery Office has ever proceeded with a judgment through the court system.

Suffice it to say it is our understanding from information gleaned from the Roads and Maritime authority website for the period 1/10/2011 to 31/10/2012 that there were fine default suspensions, which we understand includes both registration and licenses of 157,621 people for non-payment of fines which only confirms that the state debt recovery office has never proceeded through the courts with any court judgment, so the question has to be asked is why is the Attorney Generals Department and the Better Regulation Office even consulting with the State Debt Recovery Office when they have never run a matter before the courts obtaining a judgment for a debt.

It appears that although the private sector has to go through a process through the courts of five procedures to acquire a judgment debt and then a further four procedures through the court for what is recovery referred to in our letter to the Treasurer dated 4/6/13.

It would appear that departments such as the Roads and Maritime Services and their agents the State Debt Recovery Office are immune from the laws of the state that affect every other business and individual who have to abide by such laws for the recovery of debts as laid down by the government in legislation.

I stand to be corrected, however I believe that the consultation process in relation to the existing processes that currently exist for the collections of debts and the consultation process has been mainly with lawyers for either the Roads and Maritime Services and the State Debt Recovery Office or perhaps other lawyers employed in government departments.

I might just add that a lot of our members of the above Institute are briefed by legal firms to collect debts that are owed to them, surely this must indicate to the Attorney Generals Department that Commercial Agents have a direct knowledge of the difficulties and the procedures and processes of collecting debts and surely they must be capable of being able to assist the departments in the practicalities and the procedures for cutting down the enormous court time and costs involved in collecting debts on behalf of commercial enterprises and possibly government departments.

As per my letter to the Treasurer dated the 4/6/13 if the procedures for collecting debts were simplified and cost savings then thousands and thousands of businesses would be able to collect the monies owed to them and thus being able to pay the GST to the Federal Government which would then translate into additional revenue coming to the states.

We trust that you will be able to e-mail to us any findings or deliberations or procedures of the stakeholders through the investigation conducted by the Attorney Generals Department and the Better Regulation Office prior to its being disbanded and we await your early reply with the documentation so that we might have some input into this very vexing problem of the collection of debts and the deficit to the state of the GST revenue that the state should be acquiring.

Yours faithfully,

John Bracey.

BAD DEBTS

The figures for the Partnerships and the Companies were taken from the statistics tabled in Parliament from the ATO.

Between the end of the financial year of 1997 and the year 2002 there were between 11,700 and 10,979 partnerships and they obviously had an accrual accounting system and they wrote off bad debts totaling \$864,637,280m. If we divide this figure by 6 we end up with approximately \$144,106,213 average write-off of bad debts per annum. If we then divide that by the average number of partnerships say 11,000 there would be write-off of approximately \$13,100 per partnership.

We now look at the bad debts in relation to companies and between the financial years ending 1997 and 2002 there were between 33,000 – 40,000 companies over that 6 year period wrote off approximately \$22,370,070,873. And in 2002 financial year bad debts of \$5,823,415,533 was written off. If we divide that by 40,000 we end up with an approximate figure of \$145,585 per company.

Both these partnerships and businesses worked on an accrual accounting system. In other words they paid the GST on their invoices and the following year if they didn't get paid they claimed back the bad debts and GST.

We now take from the information from the Australian Bureau of Statistics who indicated that there was approximately 1,233,200 small businesses, these businesses employ up to about 200 employees, these small businesses work on what we call 'a cash accounting basis' and that means that they only pay tax and the GST on the monies that they collect.

If we take these small businesses, and they are larger than the partnerships we could then say approximately that if each small business did not collect say \$20,000 in bad debts in any given year that would amount to about \$24Billion per annum and over a 6 year period that would account for approximately \$144Billion. That together with the 40,000 companies and that's the \$29Billion, plus the \$860Million, written off by partnerships, we have a figure pretty much close to \$170Billion over a 6 year period, of which company tax has not been collected nor has the GST.

It would appear that these figures are an escalating figure in relation to the 40,000 companies and any downturn in the business also means that the smaller businesses have an even larger uncollectable debts so the Federal Government is missing out on the company tax on the best part of \$170Billion together with the \$17Billion worth of GST.

It will be noted that these figures from 1997 for the 40,000 companies have gone from in 1997 \$1.79Billion, 1998 \$2.316Billion, 1999 \$3.369Billion, 2000 \$4.988,Billion, 2001 \$4,079Billion, 2002 \$5,823,Billion so the escalating figure will obviously accrue to huge amounts of money that the government is not collecting. It must be assumed that the small businesses will also not be able to collect an escalating amount of bad debts

John Bracey. [REDACTED]

Statistical Information

The figures below are for NSW for the period 1.7.2010 to 30.6.2011

Notices Issued - 1,226,550 Fines Issued - \$248,509,081

The following figures are for NSW extracted from the Roads and Maritime Authority website period 1.10.2011 to 31.10.2012

Court cancellations	16,295
Court disqualifications	16,623
Demerit Points suspensions	49,193
Excess speed suspensions	4,912
Fine default suspensions	157,621
Police Suspensions	<u>16,272</u>
TOTAL:	<u>260,916</u>