

**Submission
No 5**

DEBT RECOVERY IN NSW

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Marrickville Legal Centre

Fax Message

To: NSW Parliament

Attn: Legal Affairs Committee

Fax Number: (02) 9230-3052

Date: 16 May 2014

From: Michael Walton **Pages (including cover sheet):** 5

Subject: Submission to Inquiry into Debt Recovery in NSW

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Marrickville Legal Centre

The Committee Manager
Legal Affairs Committee
Parliament House
Macquarie St
SYDNEY NSW 2000

BY FAX: (02) 9230-3052

Friday, 16 May 2014

Dear Legal Affairs Committee,

RE: Inquiry into Debt Recovery in NSW

Thank you for the opportunity to make a submission to the Committee's inquiry into debt recovery in NSW.

A. About Marrickville Legal Centre

Marrickville Legal Centre (MLC) is a community legal centre, which has for over 30 years been providing free legal advice and assistance to disadvantaged residents in Sydney's inner western and southern suburbs. MLC also has a specialist Youth Legal Service, which provides legal assistance to all young people across New South Wales. The Centre is staffed by a dedicated team of staff and volunteer solicitors and students.

Advising and acting in credit and debt matters is a large part of our generalist legal practice. In 2013-2014, debt and fines advice accounted for more than 26% of legal advice the Centre gave to clients.

There are several issues arising from our day-to-day legal practice that we would like to raise with the Committee.

B. State Debt Recovery Office

Advocates Hotline

The SDRO provides an excellent Advocates Hotline. The Hotline is efficient and allows solicitors and advocates to understand quickly a client's state debt issues and repayment options. Generally, the SDRO staff on the hotline are helpful and knowledgeable. We commend this service and the staff of the Advocates Hotline.

Review of fines issued to vulnerable persons

We believe that the application of section 24 E(2)(d) of the *Fines Act 1996* has been working well. This section specifies a reviewing agency to withdraw a penalty notice if it is found that the fine recipient was unable, because of an intellectual disability, mental illness, cognitive impairment or homelessness to control their conduct, or understand that they were committing an offence. MLC has made successful applications under this section for fines to be withdrawn for vulnerable clients who would never have the capacity to pay off the fines.

Case Study:

Chris is an Aboriginal client who had been homeless for 15 years and had serious physical and psychological disabilities. Over the years Chris had received fines for offences such as travelling on a train without a ticket and other related offences. Chris owed \$13,000 in unpaid enforcement notices. Chris had been trying to pay the amount off even though he was homeless.

MLC made an application to the SDRO for write-off/waiver of his outstanding enforcement orders, which reduced the debt by \$8,600.00. Chris was then able to enter into a Work & Development Order to attend counselling sessions, which would further reduce the debt by \$1000 per month.

Work Development Orders (WDO)

The introduction of Work Development Orders (WDO) has proved an invaluable option for many of our clients who have little or no income and assets. We strongly believe that the programme should be continued into the future.

However, we have noticed that the number of WDO providers who can assist non-English speakers is limited. We recommend that this is an area that should be improved. Another problem is that the full list of WDO providers is not available to solicitors and advocates. This makes it very difficult to ensure that our clients are linked up successfully with a WDO provider.

Recommendation:

- **Increase the number of WDO sponsor organisations who can assist non-English speakers; and**
- **Allow Community Legal Centres access to the full list of WDO sponsors.**

Enforcement action

The preferred method of enforcing unpaid fines in NSW seems to be placing RMS restrictions on the fines debtor. However, if the fines debtor does not have a drivers licence, the SDRO will sometimes proceed to more severe methods of enforcement under Part 4 of the *Fines Act 1996* (NSW). This is done without any reference to the financial or health circumstances of the fines debtor. For example, we have given advice to distressed clients about SDRO property seizure and garnishee orders, when it is clear that the client has no income or assets to seize or garnishee.

Case Study:

Sally is a 19-year-old client with a 5-month-old baby who called MLC for advice. Sally had accumulated a number of fines when she was a teenager for travelling on trains without a ticket. Sally had been paying off the fines through a Time to Pay arrangement through her Centrelink payments.

Sally had checked her bank balance to find that her entire balance and savings had been taken out due to a garnishee order from the SDRO. The garnishee order had taken out \$850.50 from her account leaving her with a \$0.00 balance.

MLC called the SDRO Advocates Hotline and found that Sally's Centrepay payments had reduced, which effectively breached the Time to Pay arrangement Sally had with the SDRO. Sally was not informed that the automatic Centrepay payments had changed.

C. Private debt recovery: issues for debtors

The ASIC/ACCC *Debt collection guideline for collectors and creditors* are a good guide to best practice in this area. Unfortunately there are still some poor practices in the debt collection industry.

Sham Letters of Demand from Legal Firms

One common bad practice is for creditors or debt collectors to retain a solicitor to write a letter of demand to debtors. The solicitor will state that they act for the creditor or debt collector. The solicitor will threaten legal action. However, the solicitor will then state that all correspondence should be directed to the creditor or debt collector, rather than to the solicitor.

This practice brings the legal profession into disrepute and should be stamped out. In reality this is a sham solicitor-client relationship. A solicitor usually represents their clients and expects all correspondence to be directed to the solicitor. In these cases, the solicitors are really being retained to use their practicing certificates to scare and harass debtors, rather than pursue debts in a legitimate fashion. More often than not, these legal firms are located in Victoria or Queensland.

Private Car Park Operators

A further poor practice has been exhibited by some private car park operators. In these cases, the car park operator will harass clients and threaten legal action, but with no intention of ever filing a court claim. Another bad practice of these operators is to ignore and fail to respond to correspondence from an alleged debtor's solicitor. On behalf of dozen of clients who allegedly owe tens of thousands of dollars, we have written scores of letters to the car park operator, its in-house debt collection agency and its various solicitors. We have only ever received one letter about one client in response. Fair Trading NSW should be able to compel commercial creditors to follow the ASIC/ACCC guidelines.

Recommendation:

- **Fair Trading NSW should have the power to compel commercial creditors and debt collectors to comply with the ASIC/ACCC debt collection guidelines.**

D. Private debt recovery: issues for creditors

Identifying and locating the debtor

We sometimes give advice to creditors, particularly in small claims. One of the issues that often occurs is difficulty in identifying and/or locating a debtor. In the past we have advised clients to check the electoral roll to ascertain a debtor's address for service of legal process. However, the Australian Electoral Commission now takes the view that the general public may not view the Electoral Roll for purposes unrelated to electoral issues.

An alternative procedure for preliminary identity discovery is set out in rule 5.2 of the *Uniform Civil Procedure Rules (NSW)*. However it is complex and expensive. A low-cost procedure for small claims should be available in the Local Court and NSW Civil and Administrative Tribunal.

Recommendation:

- **Introduce a low-cost procedure in the Local Court and NCAT to replace UCPR rule 5.2**

E. Conclusion

We appreciate you taking the time to consider our concerns identified in this letter, and we are happy if required to expand on any of these issues.

If you have any questions about our submissions please contact Michael Walton on (02) 9559-2899.

Michael Walton
Principal Solicitor