

DEBT RECOVERY IN NSW

Organisation: NSW Privacy Commissioner
Name: Dr Elizabeth Coombs
Position: Commissioner
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information
and privacy
commission
new south wales

[REDACTED]
Our reference: IPC14/A000042

Mr Bryan Doyle
The Chair
Legislative Assembly Committee on Legal Affairs
Parliament House
Macquarie Street
SYDNEY NSW 2000

Attention: John Miller
By email: legalaffairs@parliament.nsw.gov.au

21 MAY 2014

Dear Mr Boyle,

Re: Inquiry into Debt Recovery in New South Wales

I write to you in regard to the inquiry into debt recovery in New South Wales (NSW) conducted by the Legislative Assembly Committee on Legal Affairs (Committee).

Debt recovery is a reasonable exercise for legitimate unpaid debts. However the community has justifiable concerns about the ability for debt collectors to access government information held on ordinary citizens and businesses and the intrusion into their privacy when undertaking debt recovery activities. I therefore offer the Committee my comments to assist with the inquiry.

From a privacy perspective, my role is an acknowledgement that NSW citizens need an independent voice. The role recognises the importance of the privacy rights of the people of NSW with respect to both their personal and health information. As Privacy Commissioner, I oversee two pieces of legislation that protect the privacy rights of citizens of NSW. These are the *Privacy and Personal Information Protection Act 2002* (PPIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act).

The PPIP Act regulates the way in which all of NSW public sector agencies collect, use, access, store and disclose personal information. All NSW public sector agencies must comply with the Information Protection Principles (IPPs) under the PPIP Act and the Health Privacy Principles (HPPs) under the HRIP Act. The objective of the NSW privacy regime is to give citizens confidence that NSW public sector agencies manage their personal information appropriately in all circumstances.

In 2013, the Office of the Australian Information Commissioner (OAIC) undertook the OAIC Community Attitudes to Privacy Survey Research Report (Report) which studied community attitudes to privacy. The Report noted universal agreement by Australians on activities that they considered a misuse of information. This was (a) revealing personal information to other customers (b) using personal information for a purpose other than the one it was provided and; (c) the collection of personal information by an organisation that a person has not dealt with before. In the context of NSW citizens providing NSW Government with personal information for the purpose for which it is collected, they would not expect that the personal information would be provided to debt collectors for debt recovery purposes.

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However, in collecting personal information the underlying assumption is that personal information may be used to recover government taxes or fines. This is recognised in the NSW privacy regime as the disclosure of personal information for the purposes of protecting public revenue is permissible in spite of the general limitation on NSW public sector agencies to use and/or disclose personal information for purposes other than for which it was collected.

Generally, as it relates to debt recovery, unless personal information was collected for the purposes of debt recovery by a NSW public sector agency, it would be unlawful for that agency to use or disclose that information for the purposes of recovering a debt. This would be in breach of the IPPs which require personal information that is used or disclosed by a NSW public sector agency to be directly related to the purpose for which the information was collected.

The NSW privacy regime does not regulate entities beyond NSW public sector agencies and the privacy implications of personal information and debt recovery in a private context is a Federal issue. It is suggested that comments be sought at a Federal level.

As it relates to creditors, the NSW privacy regime provides a mechanism to allow information to be disclosed by the Department of Police and Justice to provide personal information to credit reporting agencies. While this is distinct from debt recovery, this is an example of a mechanism in place to assist debt recovery generally. It is recognised that the disclosure of personal information in this circumstance is necessary and in the public interest to enable lenders to be better informed about the creditworthiness of individuals who have been subject to default judgments. This is a Public Interest Direction made under section 41 of the PPIP Act and can be located on the IPC website at [REDACTED]

NSW citizens ^{would} expect to be clearly advised if their information will be accessed, collected, used and retained for debt recovery purposes. This would require NSW public sector agencies to outline the type of personal information and reasons for its collection, and how that information is collected, accessed and stored. I would consider that NSW citizens would have the same expectations of private organisations handling personal information for debt recovery purposes.

Generally, for NSW public sector agencies and private organisations responsible for debt recovery, the debt recovery process and access to information can be managed appropriately in the context of the right to privacy. The Committee's inquiry and any review that will be undertaken on the debt recovery framework should ensure that the privacy of individuals that may be affected by debt recovery action is thoroughly considered.

I hope this information will be of assistance to you. Please do not hesitate to contact me if you require anything as I would be pleased to discuss this matter further.

Yours sincerely

[REDACTED]
Dr Elizabeth Coombs
NSW Privacy Commissioner

21/5/2018