REPORT OF PROCEEDINGS BEFORE

LEGAL AFFAIRS COMMITTEE

INQUIRY INTO DEBT RECOVERY IN NSW

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At Sydney on Monday 16 June 2014

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The Committee met at 9.00 a.m.

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PRESENT

Mr B. M. Doyle (Chair)

Mr S. B. Bromhead
Mr R. A. Furolo
Ms S. K. Hornery
Mr J. R. O'Dea (Deputy Chair)

CHAIR: Good morning and thank you for attending this public hearing of the Legal Affairs Committee. The Committee is holding hearings this morning in relation to its current inquiry into debt recovery in New South Wales. Today we will hear from the Australian Creditors Alliance, the Australian Institute of Private Detectives, the Australian Collectors and Debt Buyers Association and Institute of Mercantile Agents, Legal Aid NSW, Redfern Legal Centre, Consumer Credit Legal Centre, the Information and Privacy Commission NSW, Office of the Sheriff NSW, the Security Licensing and Enforcement Directorate of the NSW Police Force, NSW Fair Trading, the Local Court of NSW and the Office of State Revenue**.**

For the benefit of the gallery, I note the Committee has resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing the coverage of proceedings are available. I now declare open the hearing.

MARK VINE, Director and Solicitor, Australian Creditors Alliance, affirmed and examined:

CHAIR: Our first witness today is Mr Mark Vine. Thank you for appearing before the Committee today to give evidence. Could you please advise the Committee in what capacity you are appearing today?

Mr VINE: I am a private solicitor specialising in debt collection. I am also the director of a company called the Australian Creditors Alliance. We are a small and developing company; it is almost a club similar to the NRMA where we take membership from creditors who want to be assisted with their debt collection and who want to have some political input into the debt collection system. The Australian Creditors Alliance is, in fact, a commercial agency but it is unlicensed because it does not carry out the normal duties of a commercial agent, it delegates all those duties to various solicitors around Australia, and I am the solicitor for New South Wales. We basically represent creditors from giant companies such as Bosch, the Austrian Pension Fund in Vienna, down to the local plumber, and they are complaining, complaining, complaining.

CHAIR: I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in action in relation to the information you provide. I also note that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. The Committee has a few questions we would like to ask you, but before we do that, would you like to make a brief opening statement? In so doing, you can take it that we have already read your submission.

Mr VINE: I used to be the Chamber Magistrate at the Downing Centre Local Court. I worked with Local Courts for 25 years. I was the president of the New South Wales Conference of Chamber Magistrates for five years. I worked in courts right across New South Wales—country, suburban and city. I started on the mail desk at Liverpool in 1975 and I retired as Chamber Magistrate and Deputy Registrar at the Downing Centre Civil Claims Court 25 years to the day, on the anniversary of when I joined. That is my experience. In that time I would have interviewed approximately 60,000 members of the public—a lot of domestic violence there but an enormous amount of debt matters and I conducted examination hearings for court, I held call-overs in court. If there is one thing that this submission hopes to walk away with—just one thing—it would be to fix the logjam which we have with the Sheriff's office at the moment. The procedures are there, they are just not being carried through. Basically I rely on my submission.

CHAIR: What do you see as being the biggest barriers to an effective debt recovery process in New South Wales?

Mr VINE: At the moment it is the fact that sheriffs do not work reasonable hours and it is taking for ever to get the sheriffs to do anything. The corner of King and Elizabeth streets Sheriff's office is the major Sheriff's office in New South Wales. They currently have arrears of approximately seven to eight months to execute a writ. A writ expires after 12 months; they finally get out there eight months later and say, "We knocked on the door and there was no-one home". We say, "Can you go back and try again? But please don't take eight months to do it because the writ is about to expire".

The other problem is the privacy laws. The privacy laws have created a situation where you just cannot find anybody anymore. You used to be able to go to the Electoral Office. When I was in chamber people would come in and say, "Someone owes me some money. I've got a court judgement; how do I find this guy, he's done a runner?" You would simply say, "Go up to the Electoral Office and check the electoral roll. Just keep checking until he shows up". The electoral legislation basically has already said you are not allowed to do that, but they have never enforced it until the last 18 months. Now if you go to the Electoral Office, in most electoral offices they will tell you that you are only allowed to look at your own entry and nobody else's, and if you take a court file with you and say, "I'm trying to find Mr Schdelze", they will say, "You are not allowed to look for Mr Schdelze's name". The penalty is $110,000 for looking at somebody's address for a commercial purpose.

So ordinary members of the public—and they are a lot of our members—are forced into the hands of commercial organisations who want money to go searching for people. In the old days you could go to the courthouse and issue a statement of claim over the counter and there were reasonable chances of finding people. The ability to find people today is getting worse and worse. I have read every submission that has been put before the Committee today. I support most of them but the fixation about privacy, allowing privacy to interfere with the administration of justice I find unconscionable. What I am suggesting is that we have a discovery mechanism whereby if you cannot find somebody you go to the court, you fill out an application and the court

can order RTA, or RMS as they call it this week, or the Electoral Office to supply information to the court—it does not have to be out in the public domain—and the court can pass it on to the Sheriff and the Sheriff can go and execute the writ. You can do this before you commence action but you cannot do it after you have commenced action, and that is crazy.

The other thing that needs to be taken into account is the enormous cost. There is billions and billions of dollars in debt simply being written off and, as a result, there is no GST being collected on it, and that should concern the State Government. There is also millions and millions of dollars in cash not being collected. That is basically the thrust of the problem.

CHAIR: A number of submissions have called for the current ACCC and ASIC debt collection guidelines to be endorsed as mandatory industry code practice with clear penalties and avenues for redress for practices that are outside the guidelines. Do you have any views on that proposal?

Mr VINE: I think that the guidelines should become mandatory because there are some rogue people out there not complying with them. There are some suggestions also, I note, that they should go to what is called negative licensing. I am not too sure about that. We used to have an old system, the 1963 legislation, where it was a fairly simply procedure to get licensed through the local police station; you would pay $50 or $60 and then you would have a licence and people knew who was doing this collecting and who was not. I consider the current system to be draconian; it is just too burdensome on the industry. I do not personally support zero licensing; I think some small amount of licensing should be introduced, and part of that licensing procedure should be a fit and proper person check through the police and they should be required to sign an undertaking that they will comply with these guidelines, especially if they are compulsory.

CHAIR: Do you think there should be a distinction made between debt collection practices for businesses and debt collection practices for individuals?

Mr VINE: I cannot see the point, because you are going to run into problems. A lady at the counter at Campbelltown court the other day had lent a neighbour some money and she was ranting and raving and she was going to get her brother to go down and beat the crap out of this guy. Some people are running tiny businesses out of their premises; they do not have a business name, they are not a company. So you get these grey areas of overlap. You are either collecting a debt or not collecting a debt and you are either doing it yourself through the local courthouse or you are screaming down telephones or you are using professionals. Professionals are going to comply with the regulations otherwise they will not be in business for very long, and I do not think you can control the individual plumber out there who is kicking at doors.

Ms SONIA HORNERY: Thank you, Mr Vine, for coming in this morning. You answered an earlier question by stating that the sheriffs do not work reasonable hours. My question is in two parts. Do you mean that the hours that they work are generally office hours and that means that they are not being able to meet the people that they need to? The second part of the question is is it because they are not allocated enough hours to do the job they are prescribed to do perhaps?

Mr VINE: A bit of both. I talk to sheriffs around New South Wales every week. I have to ring them and say, "What's going on? What happened to that writ?" They are telling me they do not have the resources: they do not have enough cars, they have not got a petrol allowance, or "We can't get out there this week because the District Court is sitting at Forbes"—Tamworth, or wherever it is—"and we have to stand guard at the court for two weeks while the District Court is in town", so no work will be done for two weeks. These are the sorts of things that are being a problem. There are not enough hours and resources available to them, but the major problem is that society has changed from the fifties and sixties. People, housewives, are not home anymore, they are out at work.

Some years ago I did a little experiment in [redacted] Road in [redacted]. I went out to serve a summons, knocked on the door and there was no-one home so I went next door to see if the neighbours could confirm that the debtor lived there. There was no-one home so I went to another house, no-one home, I went across the road—no-one home, no-one home. I went to about 10 houses in the street and could not find a single person. I thought I should become a burglar because there was no-one at home in [redacted]. The sheriffs work eight to six, Monday to Friday. As I say in my submission, if you live in Blacktown and Campbelltown people are on the train at 7 o'clock and they get back to their homes about 7 o'clock and the sheriff has been there and there is no-one home. He leaves a card and they just throw the card in the bin.

Mr JONATHAN O'DEA: I do not want to malign the Sheriff's office because I think probably society has not kept up with changes, or the legal system and the bureaucracy that oversees the Sheriff's office has not kept up with some of the changes that you mentioned in terms of changing societal patterns and work demands, but it does seem to me that there are other functions that the Sheriff is asked to perform that might distract from the execution of writs. There has been a reduction in resources in the Sheriff's office, and there was industrial action for a while which is a little while ago now, but some other jurisdictions I understand do go down the path of having outsourced functions to private agents and I am wondering what your experience of that is and what your view is on the potential to outsource functions of the NSW Sheriff to private agencies?

Mr VINE: One of the problems with outsourcing is control. If you have a sheriff, you have control. He is a public servant and the Government theoretically has control over what goes on—disciplinary control, et cetera. Many years ago, in the 1960s, we had private sheriffs in remote areas of New South Wales. The local fire station manager or something would also be the sheriff and, once in a blue moon, he would go out to Lightning Ridge and execute a writ or do whatever he had to do. They were abolished over time. I do not know why; I was a junior clerk at the time and I did not get to hear why that happened, but as you climb the tree you start to hear stories because you get closer and closer to head office. If you privatise—and I do not have any strong feelings one way or the other—the problem is how do you control private organisations that are a few steps away from Government?

There are theories—economic theories—that would say the Sheriff is going to get paid no matter what, so he has no great incentive to work hard and be efficient and everything, and if you have a private enterprise organisation that relies upon getting its contract renewed every few years, they might be more efficient in the way they deliver services. The other side of that coin, of course, is that they can also be more gung-ho. I know at the moment one of the ideas that is being kicked around in the sheriff's office, or by the NSW Sheriff, is to have private agents go out and do the demands and make the seizures, and then have the sheriffs physically go out and pick up the seized goods, put them on the truck and take them to auction. One of the problems sheriffs have is that they go into a house and look at the stuff and think, "No-one is going to buy that at auction. Why are we putting it on a truck? Why are we doing all this work? It is just going to have to be brought back."

I think if you do this split system that is being talked about at the moment, if private enterprise guys go out and make the seizure and sheriffs then have to collect it and sell it, you will get a discontinuity between the two. They will be seizing stuff so they can get a result and make their statistics look better, and the sheriff will come out and say that it is rubbish and should be taken to the tip. I think it should be all of one or all of the other. My personal preference is to keep it with the sheriffs because those guys have been trained and they are under the control of the department. If anything, you should be privatising the security functions in the courthouses so you get private security firms standing guard at the court so that the sheriff can go out and do his law enforcement. Law enforcement field work to me is far more controversial and problematic than standing guard at the courthouse. That is what I would be doing if I was the sheriff.

Mr JONATHAN O'DEA: It is effectively tackling the solution in a different way.

Mr VINE: Yes. I am told that there are 27 sheriff positions vacant at the moment.

Mr JONATHAN O'DEA: Are you aware of where any of those alternate models that you have talked about have been implemented in other jurisdictions and how they are performing there, and equally are you aware of benchmarking of sheriff service performance across jurisdictions?

Mr VINE: Very little awareness of that, because I am a New South Wales lawyer and I work in New South Wales because we do not have a national legal system, but I do have a fair amount of contact in Victoria and Queensland. We have sent staff to Victoria and Queensland for enforcement. I find that Victoria has the worst procedures and the worst paperwork in the whole country—it is almost Keystone cops if you look at their forms—but I understand they have some sort of private arrangement with sheriffs. How it works I am not sure, but the sheriffs will work Saturdays and evenings, and they get fabulous attendance results where the sheriff actually gets out there at 7 o'clock on a Saturday morning and meets with the debtor.

Unfortunately, Queensland and Victoria give debtors the property protections of bankruptcy without requiring them to actually go bankrupt, so in New South Wales if a sheriff gets there and finds somebody he can make reasonable seizures. In Victoria and Queensland, they get there more often than New South Wales, but they have limited power to seize anything. The result is that in Queensland and Victoria they are more likely to meet with the debtor and less likely to actually collect the money.

Mr ROBERT FUROLO: Thank you for your submission, which is very comprehensive and obviously required a lot of effort. Early in your submission you made a statement that the last 30 years have seen a massive increase in the sheriff's failure rates for executing writs. Are there any records or statistics that are kept about that?

Mr VINE: I wrote to the Sheriff's office many years ago—10 or 15 years ago—asking for this and they said that none were available. That is basically anecdotal, from my experience. When I was a junior clerk working in courts at Goulburn, Holbrook, Liverpool and Sutherland, the notices of non-levy used to come in and we would process them. It was 30 or 40 per cent. Today it is 70 or 80 per cent notices of non-levy and when you read them there has been an increase in the notices of non-levy that say there is nothing there worth selling, but mainly it is, "Been there, knocked on the door and no-one was home", and most Sheriff's officers will say, "I went there on Tuesday the 27th at 11.30 a m. and there was no-one home." You can look at it and say, "Of course there was no-one home at 11.30 on a Tuesday morning." How many people are home today at this time? Very few.

Mr ROBERT FUROLO: So you think one of the most important reforms in this area is to resource the Sheriff's department sufficiently for them to be able to execute the writs?

Mr VINE: Yes.

Mr ROBERT FUROLO: You obviously have a lot of experience in this area. When you are thinking about people who are the subject of debt collection, is there a common element in their circumstances that you see that is repeated over and over? For example, are most of the people who are the subject of debt collection action working families, wealthy individuals, business operators who are trying to deliberately get out of a debt, or people who are just unable to pay because of their other circumstances?

Mr VINE: It depends on the industry in which the creditor is operating. In the Downing Centre, the Commonwealth Bank, Westpac, NAB and all these people would come in with a huge pile of statements of claim and pay thousands of dollars in filing fees, and almost all of those were against individuals. They were nearly always, in the old days, Bankcard—Mastercard and Visa now—and they would come and see me, and I would interview them and say, "Well, this is what you need to do." Most of them are people who fail to budget. Most of them were—I would not say impoverished, but they were lower income people who just overstepped the mark. If you go into other areas of industry like the building industry, that is why we have so many building legislations and building inquiries, because there is a culture in the building industry of cheating people.

There seems to be a growing number of what I call debt thieves, people who deliberately steal money under the guise of debt knowing that they have no intention of paying it. The police will not come after them if they do it in the guise of debt, but if you do it by way of embezzlement the police will take over. I have two examples of actual cases. One at the moment is a gentleman who basically bought $7,500 worth of goods from a small business in the Blue Mountains. He gave them a cheque and told them, "Don't bank that cheque for a couple of days, I have to arrange a bank transfer", and then he disappeared and could not be contacted. When they finally banked the cheque, they found the cheque had been cancelled. We have found him and we have got a judgement. The sheriff cannot get him to come to the door in secure premises at Potts Point. The guy has a Porsche. He would not come down. There were four attempts to serve a summons.

Finally, I personally drove from Campbelltown to Potts Point the other night. He still would not come down to answer the door, so we served it by leaving it in the letterbox, and then he rang us and told us he could not possibly come to court on the 26th because he is going overseas. He owes $10,000 and there is a small husband and wife business up in the Blue Mountains desperately trying to get $10,000 from this cheat—and there are probably a thousand of those guys around New South Wales at the moment.

Mr ROBERT FUROLO: Would that be a high proportion of people who are the subject of debt collection action or would that be a relatively small proportion?

Mr VINE: It is a relatively small proportion where it is clear that the debtor is a debt thief. There is a large number of people where you think either this guy did it on purpose or he has reckless disregard for the rights of other people. There are a lot of business people out there who fund their businesses, not through an overdraft but through debt. They buy goods not caring whether or not they can pay for them. In my particular organisation, most of our members are wholesalers. The biggest one is Bosch. They wholesale to industries and

there are people out there who just buy $50,000 worth of goods figuring the money will come in from somewhere, and it does not. The number of people who are struggling in debt is very few. We tell all our members, "Ring the person and find out what has gone wrong." Maybe they have had a car accident; maybe they have lost their job. In the vast majority of cases, no legal action is ever taken and an arrangement is made. Legal action is taken for people who make promises and break them, or who basically stick the finger up at the creditor and say, "Get stuffed", or who abscond and try to get away with it.

At one end there is a small but an increasing number of thieves. A guy out there called [redacted] got out of Parklea prison not long ago, but he is a professional thief who has aliases and bogus companies and he will steal thousands of dollars on credit. He has no capacity to pay, no intention of paying and never tries to pay. It is almost impossible to track him down. Somebody got him and the police went after him and he spent some time in Parklea, but the vast majority of people cannot get this guy, and when you take it to the police they say, "It is a civil matter, it is a contract, go away." The matter in the Blue Mountains is the same sort of thing. The police look at it and go, "No, we're not going to chase that", and you look at it carefully and say, "It is fraud", and then there are grey areas where you think, "Maybe it is fraud, or maybe it is reckless disregard for the rights of others."

Most of the poor do not get sued. One of my other clients is the Catholic Church. I do collections for the Marist Brothers school fees. I am an old St Greg's boy. You have to stop and think how bad you have to be for the Catholic Church to sue you. They ring and write, go and see the parents, and if you are in difficulty they bend over backwards to accommodate you. They sue you when you run away, when you lie to them or when you demonstrate again and again that the promises you make are not going to be met—they promise to pay $30 a week and no money ever comes in, so finally the bursars just go, "Enough."

CHAIR: Is what you are saying that often people resort to legal action as a last resort; there is a whole process they usually go through before they get to that?

Mr VINE: Yes. We tell our members to follow a particular model. We suggest to them that they keep away from commercial agents who take percentages, which is the major model of debt collection—and a lot of people think that that is what it is all about. If you give it to a commercial agent, they will ring 30 times, 20 times, and ring you every fortnight if you do not make your payment, and they will keep 10, 20, 30 or 40 per cent. I have a friend who is a commercial agent in East Sydney. He had to collect $400,000. He wrote one letter, and the cheque showed up. He kept $40,000 for himself for writing a letter and he sent the rest off to his client—and I am going, "I am in the wrong business." We tell them to ring and make private arrangements—a polite phone call. "If that doesn't get you anywhere, send your own letter of demand saying if you don't pay this amount by that date we're going to take legal action." The demand letter they all use says, "If there's a problem, call me and make arrangements." If that does not work, then we go straight to legals.

Unlike the commercial agents, we say to them, "Once legal action is commenced, don't talk to them, don't engage." They ring up and say, "Can I make an arrangement?" "No." The uniform civil procedure rules say go to the courthouse and fill out a proper form in the proper way and do it by the book, and that covers everybody. Commercial agents will tell you, "Get on the phones"—I was offered the job at Collections House in 2000 or 2001. I did not take it—"ride the phones constantly." You are paying 10 clerks $40,000 a year to be on the phones ringing, ringing, ringing all the time. The model we put out to our members is just to take legal action and if people want to make arrangements to pay, they do it properly through the courts so a record is kept. People will ring up and say, "Oh, I'm dead broke, Can I pay it off?" and the next day you see them drive past in their new BMW. So we get them to fill out the proper form 17 at the courthouse, get the registrar to grant it and they are required to swear an affidavit as to their finances and we can sort of get them if they lie to us.

The court counts how many applications have been made. You see some of these submissions that are made from other people. There is no limit to how many instalments applications can be made. There is not. There does not need to be because the registrar will normally look favourably on the first, think twice about the second and simply refuse the third. So they can make as many applications as they like, but after a while the court will stop listening if they have been lying to us all along. So our model is different to what everyone else is doing. Because we are a sort of club, we are saying to creditors, "If you do it this way" and because we keep our fees under control and most of our fees are recoverable from the debtor, "it is possible to collect your debts for a zero cost." Our view, the Creditor's Alliance view on behalf of all the creditors, is that this system should not be putting major burdens on the creditor. The creditor is the innocent party here, nearly always. We have actually kicked a few people out of the Creditor's Alliance who were not innocent parties.

The creditor should not be losing thousands of dollars to commercial agents as commissions or to solicitors who are charging $400 an hour simply to collect their debts. Costs need to be contained, which is why I am a great supporter, despite being a lawyer, of the Small Claims Division. It needs cleaning up, just some fine-tuning, but we should have a system where a creditor can collect his debts at minimal cost to himself. Those costs should be passed on, within reason, to the debtor and those costs need to be contained so there are not too many greedy people out there feeding off the entire system.

CHAIR: You suggest that the Small Claims Division of the Local Court should have a few improvements. Would you list those improvements and tell us your views on whether the jurisdictional level should be increased from its current $10,000?

Mr VINE: Let us start with the last one first. The Chief Magistrate wants to put the jurisdiction up to $20,000. Most members of the public you talk to will say, "$20,000 is not a small amount of money." Therefore, it should not be in the Small Claims Division. The problem is, and you will not find this in the legislation—it is between the lines of the legislation—that there are in fact three divisions in the Local Court. There is the Small Claims Division and costs are limited there. Then there is the General Division, but the costs regulations in that division say that if you are over 10 grand and under 20 grand, you are in the General Division, so you have to run a full-blown trial, witnesses, cross-examination, all that sort of stuff, but your costs will be limited to 25 per cent of the claim.

So if somebody owes you $11,000, you are not in small claims; you are in what is euphemistically called the lower General Division—you will not find that term in the Act, but that is what people are calling it—and you have to comply with all the complexities of the rules of evidence and everything, and when you win you can only claim a maximum of 25 per cent. So you get $2,700 in costs and you bill your client because of the complexity of running the case $4,000 or $5,000. He is not happy. So for that reason I think we should eliminate this no-man's-land between the upper general and the Small Claims Division and extend the Small Claims Division to $20,000, but you have to fix a few things in the Small Claims Division.

In respect to the witness expenses fiasco in small claims, when they first wrote this legislation in 1992 it said a self-representing party could have witness expenses as if they were a witness in their own case. There was no limit placed on witness expenses, but there was a limit on professional costs. I had a guy, a doctor, from Adelaide ring me in chamber—he was sued for $900—said, "I've been told that there's a limit if I hire a solicitor." "Yeah, you only get a couple of hundred bucks if you hire a solicitor, but if you come over yourself, you get unlimited witness expenses." So he flew into Sydney for the pre-trial review and then flew back for the hearing and he won and got $2,500 worth of witness expenses for a $900 claim that he beat. So I wrote a submission to head office and said, "This is crazy. We need to put a limitation in there" and the legislation was changed in 2005 when they rewrote the legislation. Now it is almost impossible to understand what it means. It is a jigsaw puzzle. It says that you can claim costs for remuneration. No-one has quite worked out what remuneration is. Is that the remuneration of the solicitor or the remuneration of lost wages? It says you can have expenses. What exactly are expenses?

My submission to Legislation and Policy was limit witness expenses to what you would get if you hired a solicitor. My view of the current legislation is that that is what it means, but the assessors are taking the view that it means you cannot have witness expenses at all. So you get some poor schmuck comes down from Lismore to the Maddison Tower to have a small claims matter heard. He wins, he has lost maybe two days' wages, travelling, overnight expenses and he gets nothing for his trouble; and the other guy has a solicitor, if he wins he gets a few hundred dollars. I am saying that the solicitor's costs that are allowed are ridiculously low and even with that, you have to look at it and say, "I don't think they're interpreting the legislation properly." If the matter gets adjourned, I can get $500 for the adjournment, but if I run the entire case, hearing, everything, I get $500 for that. If I issue a statement of claim, I can have $361 and something to issue the statement of claim and then to go to the pre-trial review, prepare the hearing, advice for my client, go to the hearing and do it all, I get $162 for that. No-one can do it for that price.

I am saying the entire fee system needs to be started again and it should be limited to step by step by step so that if you get half way through and you settle, people can know what you are settling for and it bills for each step and that costs should be limited to, say, $1,200 all up, and witness expenses should be limited to $1,200 all up so we are all playing on a level playing field and we know where we are at each stage.

Mr STEPHEN BROMHEAD: I think you have answered my question. You advocated that the Small Claims Division limit should be increased to $20,000?

Mr VINE: Yes.

Mr STEPHEN BROMHEAD: My question was: Should it be with set costs the same as in the Small Claims Division or the 25 per cent of the lower General Division about which you spoke? You have answered that by saying that the whole costs system needs to be changed?

Mr VINE: Yes. I do not like this percentage nonsense. You should get paid for each step for the value of the work you do up to that stage because all sorts of weird things happen. I can issue the statement of claim and that gets defended. I then tell my client, "This is what it's going to cost. No matter what happens, if you win handsomely, you're going to be $700 out of pocket at the moment." They will look at it and say, "I'll take over from here on in." So they do the rest of it themselves. When they win the case at the end, the court at the present moment will not give them the costs that I was awarded by the court for issuing the statement of claim in the first place. People out there are saying, "Why does the court cheat us all the time?" We are not asking for special favours; we just do not want to be cheated. You have weird things where people commence the action themselves and it all gets too hairy for them, so they come in and say, "Can you take over this case for me?" I say, "I can, but I'll only get paid" X amount of money. If I take over the hearing and take it to the end, I can get $547, I think it is, for doing that, but if I had started it from the beginning and run it all the way through, I get less. It is madness.

Mr STEPHEN BROMHEAD: The rationale of the Small Claims Division is to not have lawyers involved at all?

Mr VINE: But it does not happen.

Mr STEPHEN BROMHEAD: Magistrates actively encourage people not to have them, but many of the people about whom you spoke who are the victims in this do not have the capacity to be able to run the case themselves?

Mr VINE: Yes.

Mr STEPHEN BROMHEAD: As you said, you are advocating that the costs should change to reflect the work being done, but have it limited?

Mr VINE: Have it limited. Let self-representing parties have their witness expenses for lost wages and travelling. There are a few other things. The other day I was in the Small Claims Division waiting for my matter to come up and there were two self-representing parties and they were drowning. They had no idea what they were doing or what they were supposed to do. They had been given directions by the court but they did not understand them, and they had no parameters to work from. The court says, "You go away and prepare a witness statement." One of these people had no witness statements, just a pile of invoices in a folder and the assessor was going, "I can't make any sense out of this."

There is no form of witness statement. Why? I have no idea. All you have to do is go to the department's website and say, "We will prescribe a form of witness statement and we will give you an example" and a self-representing party can go online and look at it and go, "Oh, so that's how it's done" but if I gave you a blank piece of paper and said, "Do a development application for Campbelltown City Council" you would not know where to start. But if I give you a form and say, "Fill out the blanks" it is easy. The department is giving people a blank sheet of paper and saying, "Be your own lawyer." Increasing numbers of people are saying, "It's too hard. Mark, you're the lawyer you do it."

CHAIR: Does any of the debt recovery process cause any issues that relate specifically to people in regional areas?

Mr VINE: Not really. I keep thinking about all the things that are not in the paper. One of the things I did: I had this heartbreaking situation when I was in chamber at the Downing Centre where a woman had made an application to pay by instalments to one of the banks and the banks put everything through the Downing Centre in those days and she lived in Lismore, single mother, two toddlers, and she put in an application. It was objected to or refused and listed. So she gets this notice saying "Be in Sydney at 9.30 a m. on the following date." She was in Lismore. There was nothing on the listing telling her to go to see the Chamber Magistrate, which no longer exists these days, nothing telling her to ring Law Access. So she got on the milk train with two

toddlers, pre-schoolers, at 3 o'clock in the morning, came down to the Downing Centre. The train was late. When she got to the court room and finally found her way, the matter had been struck out and she's outside my chamber bawling her eyes out. I can see her now—and I am getting upset—she was bawling her eyes out and there are two kids sitting there in the middle of this strange place looking bewildered because mum has lost it. I brought her into the chamber and looked at her situation, gave her some advice. She was drowning. I sent her across the road to apply for bankruptcy.

But I then did a report and there is now a provision in the legislation that says that you can do small claims matters by phone. But when they wrote the regulation years later after my submission, they did not put in any parameters. There are magistrates across New South Wales who will say, "I'm not doing it by phone. I couldn't be bothered." There is no parameter that says you must be 100 kilometres from the court. There is a magistrate who says, "I don't care how many wheelchairs he's in, he has to show up." Some of these are appearances that take five minutes. Are you going to drive across New South Wales for a five-minute appearance? And there is a problem in the General Division. The current regulations for General Division require the matter to go to what is called a review where you walk into the courtroom and the magistrate will say, "Is everything ready for the hearing next week?" and you say, "Yes" and you walk out. The regulation says the solicitor who has carriage of the matter must appear.

The solicitor in Sydney rang me and said, "This is ridiculous. Guess what happened the other day? We had a matter in Tamworth. I had an agent go in there and say that everything is under control and the magistrate said, 'No, where is the solicitor with the carriage of the matter' " So the solicitor had to fly out to Tamworth the next week, walk into the courtroom and say, "Everything is cool" and walk out and that cost a thousand bucks. It is just ridiculous. A whole pile of things should be done by phone, especially in regional areas where people are travelling huge distances.

Mr ROBERT FUROLO: I just want to confirm what you said earlier that your view is that debt collection agents should operate under mandatory guidelines and should be licensed and trained for the job?

Mr VINE: Simply and cheaply the training requirements at the moment are ridiculous because the training courses are hardly ever available and cost a fortune. The old 1963 system was that you had to do an apprenticeship with someone who already had a full licence and the police simply did a check with you. I have reintroduced that system but I make sure that the guidelines became mandatory and they sign an undertaking that they will follow those guidelines. Requiring someone to do a 12-month course that is only available every two years is a bit crazy. What is happening is that a lot of commercial agents are simply saying, "It is not worth the trouble. I am leaving the industry." The training requirements at the moment are too onerous.

CHAIR: Do you have any views on whether it should be mandatory for all types of debt recovery to be covered by an external dispute resolution scheme?

Mr VINE: Yes and no. I am a trained mediator so I have a vested interest. This was written into the uniform procedure rules years ago but has never been implemented because they have not worked out how to do it. The thing you have to understand is that the huge majority of matters are not disputed so having external dispute resolution is pointless when 80 per cent of matters are not disputed. You need a system where there is some sort of cheap, simple, easily available mediation system when you have a serious argument and this is where I want to tear up the entire procedure and start from scratch.

Most of the procedures we follow now have a basis back in the fourteenth-fifteenth century when the fastest way to send a message was by horseback and most people could not read and write. I want a situation where we cut a lot of bureaucracy out and the court focuses only on matters that need adjudication and enforcement. For example, the Commonwealth Bank goes into the Maddison Tower, issues 600 statements of claim and three of them are defended. I am saying that they should not have to take it to the court; that they do what the Federal Court does in relation to companies and issue a form of statutory demand or whatever you want to call it. They simply issue it, sign it, date it and serve it and if the debtor pays it, fine. If the debtor makes an arrangement and pays it off, fine, or if they say, "Hey, I paid that six months ago" and the bank says, "Oops, sorry," fine. They do not have to pay any filing fees; they do not have to bother the court.

The matter will only come before the court when you want to register a default judgement and that is when you pay your court fees and you pay a higher court fee because you know the matter is not being paid and that it will go somewhere. If the matter is defended the defendant serves you with a defence and you then exchange your particulars. We used to have a procedure called a certificate of readiness. It did not work because

there were no parameters around it. You can have a situation where if the matter is not defended you do not come to the court until you have complied with the certificate of readiness and one of those certificates of readiness requirements could be external dispute resolution to say, "I have served the statement of claim or statutory demand. I have received the defence. We have together defined the issues. We exchanged particulars and documents and we went to mediation on such and such a day." If mediation does not work go to the court, put it all on the table, pay the court fee, $900, and say, "Give me a hearing date".

You will find that the number of matters going before the court will be greatly reduced because right now the model we have is—the defence is filed with the court, the court gives us a date for call over, they then try to force us into court as quickly as possible to make the statistics look good and there is no time to mediate, no time to exchange, no time to deliberate. The complaint under the old system was it took too long; people would sit on matters for a year before they got to court. Now they are going through the court very quickly. I think we have gone too far. We find it difficult; in fact, we are hemmed in trying to settle matters.

We used to have—I am trying to remember—one was 12 months and one was two years. I think we had two years to serve it and 12 months before we had to apply for default judgement. Now we have six months to serve it and nine months to apply for default judgement. People will ring up and say, "I am having a tough time at the moment with my business. Can I pay it off to you over the next 18 months?" We have to say, "You are not allowed to anymore" because we have to get a result to the court within nine months. We are not free to negotiate a settlement as much as we were once.

CHAIR: Do you have any view about debt collectors and commercial agents being allowed to appear in civil proceedings in the Local Court?

Mr VINE: They are already allowed to appear in examination matters and the legislation says you can appear by your employee authorised in writing. Now a commercial agent is not an employee and the problem you then run into is if you are going to allow commercial agents to appear as if they are solicitors, you have got to start wondering about insurance requirements for negligence, negligent advice and all that sort of stuff, and what quality of work you are going to get out of them. It is a difficult position. The complaint that is being made by creditors is, "I have hired a solicitor. He is charging me an absolute bloody fortune and it is just not sustainable." I am saying: Bring in cost reductions so that solicitors are forced to act efficiently. There is no mechanism in the Legal Profession Act to make people efficient.

If you were to allow commercial agents some right to appear, there should be an ability for them to charge for their services because our members are sick of a system that everybody takes money off them and they never get the costs of pursuing a debt back from the debtor. If a commercial agent is going to appear, they do not want him to appear on a commission basis. They want him to appear on a fee-for-service basis and that fee is passed on to the debtor and recovered from the debtor and then you start getting this problem. You start asking yourself: What is the difference between the solicitor and the commercial agent? Will the commercial agents charge the same amount? If they are going to undercut the solicitors, what does that do to the legal profession and professionalism? It is very problematic.

Mr JONATHAN O'DEA: Do you draw any distinction between a situation where there is a default judgement and it is already with a commercial agent? In other words, might they appear in civil proceedings brought before the Local Court in a situation where it is a routine debt matter that proceeds directly to default judgement and they have already been empowered to pursue a debt?

Mr VINE: I see what you mean. That has been going on for years and our members complain that if they hire a commercial agent, the commercial agent can prepare the statement of claim, file it and all that sort of stuff but the commercial agent cannot put any fees into the system to make the debtor pay. At the moment we are saying to our clients, "Hire one of our low-cost solicitors." What they do is they pay membership fees and then we subsidise the costs to our members of legal action through a solicitor. Our members would want commercial agents to be able to charge a fee, which is added to the debt and is collectable from the debtor.

There are in fact in New South Wales now solicitors who are also commercial agents and some of them double-dip; they take a percentage as their commercial agent and they put on their other hat and they charge legal fees as the solicitor. Solicitors are not allowed at the moment to charge commission and commercial agents cannot charge legal fees. We have two systems coming at each other. If you brought in a system like this and you reduced the licensing problems of commercial agents, you would have a bit of a free for all. The solicitors would become commercial agents and the commission agents would start doing solicitors' work. The Law

Society have a lot to say about that and I think you will have some problems in the Legal Profession Act where commercial agents are appearing in court making a mess of things and the Legal Profession Act does not cover them. A lot of stuff that is in the Legal Profession Act would have to be imported in the Commercial Agents Act. It is a bit of a nightmare.

CHAIR: The Committee may wish to send you some additional questions in writing the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr VINE: More than happy.

CHAIR: The Committee has resolved that answers to any questions taken on notice and additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. That concludes our questioning of you today. On behalf of the Committee I thank you for your attendance and wish you well for the rest of the day.

(The witness withdrew)

BARRY SWEET, Owner and Licensed Commercial Agent, Pacific Credit Services

JOHN EVERETT BRACEY, President, Australian Institute of Private Detectives,

FRANK HOARE, Owner and Licensed Commercial Agent, Rapid Response, sworn and examined:

CHAIR: Thank you for appearing before the Committee today to give evidence. Mr Bracey, can you indicate to the Committee in what capacity you are appearing today?

Mr BRACEY: Yes. I am the President of the Australian Institute of Private Detectives. It is a national body that looks after the interests of private investigators and commercial agents across Australia.

CHAIR: Mr Sweet, could you indicate your capacity please?

Mr SWEET: I have been a licensed commercial agent since 1974. I run a company called Pacific Credit Services. It was a significant company back in the 1990s and employed about 30 people. I have a vast amount of experience as a commercial agent. I am at a point now where I have wound the company back to a manageable amount at my age. I simply keep involved and have a familiarity that might be of some assistance to the Committee if they want to ask any questions about it.

CHAIR: Mr Hoare, in what capacity do you appear?

Mr HOARE: I am a licensed commercial agent, which is a private investigator, licensed by the Commissioner of Police. I have been in the business since 1986. I have my own business and I do basically process serving, debt collection and repossessions.

CHAIR: I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in action from information you provide. I also note that any deliberate misleading of the Committee might constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. Before we start with questions, Mr Bracey, would you like to make a short opening statement, bearing in mind that the Committee has already read your prepared submission?

Mr BRACEY: I have done some brief notes. This is virtually the first face-to-face meeting that the Institute has had with any member of Parliament other than the meeting with Geoff Provest, Parliamentary Secretary to the Minister for Police and Emergency Services, on 22 February 2012 and then with Treasurer Mike Baird, which we understand culminated in this Committee hearing. Since 1992 the Australian Institute of Private Detectives [AIPD] has been trying to have talks with the government of the day; all to no avail. We have been informed that the Government will only effectively take submissions under consideration. Other than paragraph (a), which was the two parliamentary meetings we have had, numerous voluminous submissions have been made that have been completely ignored.

This is extremely strange as nobody would expect any public servant or ministerial minder to have any consideration or expertise of an industry that they know nothing about. This appears to be the AIPD's opportunity to tender some documents and to reinforce some of the massive problems facing the private investigation and commercial agency industry. I would like to place on record that my local member, Jonathan O'Dea, who I understand is the deputy chair of this Committee, has always been extremely sympathetic and has done everything he conceivably could to assist the AIPD and myself as president. The real problem appears to be that the industry is being administered and totally controlled by the NSW Commissioner of Police and/or his designated officers who have no expertise or experience in the private investigation or debt collection industries.

I have written a submission to the Premier—originally to Barry O'Farrell and subsequently to Mike Baird—in relation to the problems in the private investigation industry, and to the police Minister's office. The submission to the Premier's office was first delivered on 13 March 2014 and subsequently to Mike Baird on 14 May 2014. This submission is effectively extremely damning on the previous police Minister and his ignorance by ignoring any submissions that we made to him in relation to the private investigation and commercial agency industry. I understand, as can be seen from the documents, that the previous police Minister always asked the Parliamentary Secretary to the Minister for Police and Emergency Services to reply on his behalf. I tender some documents to the Committee for its deliberation and consideration. I would respectfully

request that should the Committee decide that there should be some alterations or changes in the procedures for debt collection, it is most important that the AIPD be consulted as the people on the front line and we know what the problems are and how to overcome them. We are convinced that solutions will be arrived at without further enormous consultations to resolve the problems that have been allowed to prevail in the industry.

CHAIR: Could you provide the Committee with an overview of the current role of private detectives in debt recovery?

Mr BRACEY: Yes. In 2005 the AIPD set out on this massive process of doing what we call the code of practice for the private investigation and commercial agency industry. In fact we went down to Canberra and spoke to Philip Ruddock, who was then the Attorney-General. He said, "John, get the industry under one banner and we will give you Federal legislation and access to information through the Federal police." So we approached a number of industry bodies. They did not want to have anything to do with anything like that because they were not interested in their members, they were not interested in the public or their clients; they were only concerned about what their own position was going to be. So in 2008 we then had to change the code of practice and we went through this massive process again.

CHAIR: Mr Bracey, you may have misunderstood my question. I was asking for an overview of the role of private detectives in debt recovery. What do private inquiry agents actually do in the debt recovery process?

Mr BRACEY: We serve a lot of process, although we can't actually charge for them officially. We work very closely together. Most private investigators and commercial agents hold both licences—it is intricately involved. Unfortunately, the legislation back in 2004, and then the regulations some few years later, put us under the complete control of the police commissioner, as I said previously, and the Security Licensing and Enforcement Directorate [SLED]. I notice that SLED are coming here today to give evidence, which I would like to be here for. There are 82 people involved in SLED. The security industry has nothing whatsoever to do with the private investigation industry or with the debt collection industry. I have in fact tried to speak to them.

Under the code of practice everybody has to be issued with a practising certificate nationally so that they can practice in this specific area. I wrote to SLED. I got the letter back saying, quite frankly, "Forget it, you are not going to get any information from us. It is all private information and we cannot divulge any information." We wanted SLED to write to them. We asked them, "Please write to them and say that they have got to have a national practising certificate." They would not do anything. So what the hell do 82 people do in the security industry enforcement directorate? I don't know, perhaps you can tell me. That might be a question you could ask them.

I recently wrote a letter to every member of Parliament—I don't know whether you have got a copy of that—headed "Getting a fair trial in the civil and criminal courts". I don't know whether you have all read it? Have you seen this document I am holding up? I emailed it to every member of the New South Wales Parliament. Jonathan O'Dea has one. This is probably part of the problem that we have got. Nobody listens to us. I have been trying since 1992 to speak to somebody in government about our industry, the private investigators and debt collection industry. Nobody wants to talk to us. It is all put off to minders or the bureaucracy.

CHAIR: Now is your chance.

Mr BRACEY: Thank God for that. We much appreciate it.

CHAIR: This is your chance to be listened to.

Mr BRACEY: I would like to tender a document in relation to the private investigation and commercial agency industry. It might be very beneficial for the Committee.

Document tabled.

It comprises 59 pages of a review of the whole industry, the private investigators and the commercial agency industry. It goes from 1970 to the current time. There are some massive inherent problems. Effectively, from our point of view, I think it is very essential that some consideration should be given to both the

commercial agency and the private investigation industry being under Federal legislation. At the moment if you are doing surveillance and go across the border into Victoria the police will arrest you because you do not have a licence in Victoria; the same thing up in Queensland. Despite the fact that we have what they call mutual recognition Acts, the Victorian police have told us that they do not recognise that and they will arrest us.

We will win the case but the private investigator is going to be out somewhere in the region of about $4,000 to $5,000 on his legal fees, which he can't get back. It is a huge, huge problem. Up in Queensland it is even worse. I recently had a meeting with the legal counsel of the WorkCover authority in Queensland. It was the most incredible meeting I think I have ever had. They had no idea what was going on. There is actually a cartel operating. It is frightful, it really is. Basically, no matter how much you try—I begged and begged and begged so many times for somebody to talk to us—nobody will talk to us. That is the major problem. It is not Geoff Provest, the Parliamentary Secretary who keeps on being told to answer on behalf of the police Minister. I had a meeting with him and Jonathan O'Dea was present—

Mr JONATHAN O'DEA: Mr Bracey, can I suggest that we come back to debt collection. I have met with you before—

Mr BRACEY: Yes.

Mr JONATHAN O'DEA: —and I know you have a lot of issues that you have raised with the Government but the purpose of today's hearing has to be fairly focused. I only make these comments because I know where you are going and, dare I say, you can go off on tangents.

Mr BRACEY: That is right.

Mr JONATHAN O'DEA: To assist both the Committee and yourself could we return to the specific issue of debt recovery?

Mr BRACEY: A lot of our members are involved in the debt collection industry and I am getting calls the whole time. They can't find witnesses and they can't find the debtors. They can't find the people if they want to repossess a motor vehicle because they have moved. It is a massive, massive problem. I can only refer to this and say that some very serious consideration has to be given to private investigators and commercial agents in particular being able to collect debt. It is probably in that document, but in 2002—and I have not extrapolated the figures to recent times—but somewhere in the region of 42,000 companies wrote-off, on what they call an accrual accounting basis, some $5.8 billion and the next year they can claim back on the GST and company tax. But what they don't tell you in the figures from the tax department, which we extracted from *Hansard*, is that there were 1,233,000 small businesses. Those 42,000 companies wrote-off on average $143,000 per company. Those 1,233,000 small businesses employ I suppose up to about 200 people. Let's assume that they do not collect $20,000—this is in 2002—so we are looking at $24 billion plus $5.8 billion. So in 2002 we are looking at $30 billion that did not flow back to the States.

This is what I said to Mike Baird, who was then the Treasurer. The problem is we have extrapolated that now—I have not updated the figures—but we could be looking at about $100 billion to $120 billion that has not been collected and GST has not been paid on that and nor has company tax. As I have said in my submission, there are some nine processes and then you get to what they call a judgement debt. You think: Oh, goody. You phone up the client and say, "We can collect the debt now." No, no, no. You have to go through another four processes of what is called enforcement. In the end what is going to happen—and I can tell you it happens sometimes—people turn around and say, "Forget it." Chasing a $2,000 debt, costing you $5,000 minimum with nine processes, and then if you go to bankruptcy you have to pay the trustee in bankruptcy $12,000 to administer the estate, why would you be that stupid? You wouldn't.

Consequently, what has happened is that some years ago—Mr Sweet will give you this information—you got the judgement debt and that was it, you collected it. Now, we have to go through all these processes: five processes to get a judgement debt and then these four processes. In the end people turn around and say, "This is going to cost me $12,000 to try and collect a debt of $2,000?" Have a think about it. Write it off. So what a lot of commercial agents are doing is writing off the debts to the company so they can claim back the next year on their GST and company tax. That is basically what I can see is the major, major problem. Whilst I know that you are only looking at debt collection but it is—

CHAIR: The Committee is only looking at debt collection.

Mr BRACEY: —also intricately entwined within the private investigation industry as well. I do not know whether there might be a separate inquiry, but effectively if you cannot find a witness for a trial, you, your son or daughter is going to have to go to jail for something they may not have done because through the Federal and State privacy Acts the law prohibits a private investigator from finding a witness to prove that you, your son or daughter is innocent.

CHAIR: What do you see as the biggest barrier to private detectives effectively carrying out their role in relation to debt recovery?

Mr SWEET: If I could briefly answer that question. The biggest obstacle that I have, for example, with any debt collection nowadays is that there are two types of debtors: debtors who are criminally inclined in the commercial sense and they want to avoid paying the debt, and the other type of debtor is one who has got themselves into difficult circumstances and will only pay when pressed. So the first commercial agent or first lawyer to get a statement of claim served on a debtor that is pressed and in financial difficulty will get paid first. So there is always a rush to get out to the debtor on behalf of your client first. There are genuine hardship debtors, as well as debtors who are being dishonest that do not want to be found. My biggest difficulty is trying to locate people who owe money. For example, I have a significant number of schools for which I do collection.

In [redacted] a prominent member of the [redacted] society disappeared owing a school $30,000-odd. The statement of claim was out for service and had $444 fees for the court attached to it plus the commercial agents fee of $60.50 which is equal to the Sheriff's fee which we are allowed to charge. However, on calling at the place it was up for lease. This prominent member of Bowral society, in fact, was renting. He had no finance of any significance and he had disappeared. He was a prominent cycle rider and normally it would be ideal if a commercial agent had the ability to make inquiries that might help to locate that person. As it was I made inquiries with just about every cycling club in New South Wales to try to see whether he had joined another club. In fact, he had joined a cycling club at [redacted] but that is as far as it went because under the Federal Privacy Act they are not required to talk to anybody. In fact, they use that as an excuse not to talk to anybody so there is an amount of revenue that a school has lost.

That is not the only one, of course, but the common finding in the industry is if both debtors and genuine hardship debtors move their address it is difficult to locate them and collect the money. As a commercial agent I can appear at the Local Court in examination of the debtor. I can appear where they are making an application to pay by instalments. However, because of the vast knowledge I have got I regularly seek leave to appear in front of a Registrar in pre-trial reviews and call overs. I am granted the ability to do that so I think a lot of commercial agents do have a vast experience that would allow them to do that, not necessarily seeking leave. I would imagine that that would be something that a rules committee could look at that and could be beneficial so that commercial agents can appear at pre-trial reviews and call overs. So that is essentially what my couple of little problems are with the industry. It would be greatly magnified if I had a large business, like I did back in the 1990s. I am thankful, to be honest with you, that I have not got a large business anymore with some of those difficulties in the industry.

CHAIR: You mentioned appearing before call overs and pre-trial reviews. Are you referring to pre-trial reviews and call overs before what was the Chamber Magistrate and is now the Clerk of the Court?

Mr SWEET: Indeed, on defended matters.

CHAIR: It the pre-trial review and call over undertaken by the Clerk of Court not ones before the Magistrate in the court?

Mr SWEET: No, well the common practice now is the Registrar whilst technically a clerk of the court, now the Registrar sitting in a court, takes the information, appoints hearing dates and want to know the number of witnesses and just a general idea of what the evidence will be.

Ms SONIA HORNERY: It seems that your biggest frustration is to find the debtor. How will the Committee make finding the debtor easier?

Mr BRACEY: I think I put the point succinctly in the letter I sent out to members of Parliament. If you called in a carpenter to put up some shelves or cupboards in a kitchen he would say "Yes, I can do that. It will cost you $900." "Oh, that's great. When can you start?" "Monday." "Yes, that's fine but, by the way, you can't

use a hammer, nail, screw or saw." He says, "How the hell can you expect me to do the job when you take the tools of my trade away from me?" What has happened is the tools of the trade of a commercial agent and a private investigator have been taken away from them. They cannot find a witness, they cannot find a debtor and even if they do and they move they cannot find them again. It is a massive cost to the client, all the legal costs build up and companies claim that back as a tax loss so the tax is not being paid by the company on those and it just goes on and on.

CHAIR: Ms Sonia Hornery asked: What is the solution? What do you see should be changed?

Mr BRACEY: The solution is to give us some legislation so we can access the information. I have put it in my submission there in our draft legislation back in 1993—it is on our website—whereby the AIPD would access the information on behalf of the commercial agents. There would be a file number, a claim number on the file and they would access the information and there will be an audit trail so that if anybody was accessing it unlawfully—out of business, finished. Their licence will be taken away from them and, clunk, that was it. Their practising certificate would be removed. In that way we could do the job. We got a letter back from the police Minister through the Parliamentary Secretary saying effectively that because the AIPD or the industry and the Act does not have anything such as the police, where you can sue the police if they did something wrong, and that is why we cannot have any access to information. We can put a man on the moon. We can solve a problem down here. Talk to us and we would like to help you.

Mr JONATHAN O'DEA: The previous witness said something that is consistent with the line you are advocating, that privacy is interfering with the administration of justice in an unconscionable way. He put forward a proposal where the court can order access to personal information for limited purposes—identification, location—when proceedings have been commenced. Can I clarify that your proposal for a tracing mechanism and access to information would be for matters that are before courts or tribunals?

Mr BRACEY: Absolutely.

Mr JONATHAN O'DEA: Or are you talking more generally or is it limited in that same way that was proposed by the previous witness?

Mr BRACEY: In matters before courts and tribunals, both civil and criminal jurisdictions, it is absolutely vital otherwise so many people are going without proper justice.

CHAIR: What are your views of the adequacy of the Commercial Agents and Private Inquiry Agents Act as it relates to debt recovery?

Mr BRACEY: Frankly, to be honest, it was written by somebody who had no concept about the industry. We have tried, and we have written submissions, as a private investigator, for example. or a commercial agent you have to be employed for 12 months before you can become a proper agent. Nobody in our industry employs anybody, okay, not the private investigation industry nor the debt collection industry. We only have sub-contractors. So actually you cannot become a private investigator or a commercial agent—end of story. We have written but nobody will take any notice about it. The police, it being administered by the police commissioner and/or designated officer, it is a complete waste of time. The SLED consists of some 82 people, all ex-police. Nobody is interested. If you look at my submission it is very compelling reasoning.

CHAIR: A number of submissions have recommended introducing negative licencing for those undertaking debt collection activities which are not conducted face to face and for positive licensing for field agents. Do you have a view about that?

Mr BRACEY: I think that most of the debt collectors, when they can find the people, they are not onerous and want to put a gun to their head and say, "You pay or we are going to shoot you" not going back to the Timmy Bristow era, we are not going to revisit that, but the point is they want to try to settle the debt. Most of the people who are owed the money, that is their clients, are more than happy to do a deal, pay it off over time and this, that and the other. But the difficulty is getting in front of them to talk to them, that is the major problem because we cannot find them most of the time.

Mr SWEET: I was going to comment that Frank Hoare is a colleague of mine told me a rather interesting story regarding discovery.

Mr HOARE: I do a lot of repossession of motor vehicles or I am involved in it. Under the old credit code you were able to present application to the Local Court with a subpoena. As a consequence of the National credit code you are no longer able to go by way of application, the procedure is by way of statement of claim to obtain an order for the handing up of a regulated contract where a vehicle is under a regulated contract. As a result, we have been issuing discovery in the General Division of the court which costs $444 filing fee and we lodge that with the RMS and the RMS is delivering the documents reluctantly—it has taken a lot of time—relating to the registration of the vehicle and of the licensed driver or the borrower. So we are able to get the information to obtain where the current address is of the borrower.

For example, a summons for discovery is limited to $100,000 in the General Division. We can put on it, say, 20 or 30 names and the RMS will deliver those 30 names but we are still then required—which I will come to the point of this—to issue a statement of claim in the General Division because you can only issue proceedings for entry to property in the General Division and you cannot do it in the Small Claims court. You have then got to go and spend another $400-odd to get an order for entry to take the vehicle which the police will then attend. My position is that if you take a notice that is given to a borrower that you are in default—the financial company sends the notice to the borrower's last known address. He does not respond because he has shot through and that notice is usually one month's or at the most or two months' default.

When it goes to a field agent to go and knock on the door by that time it has escalated out to three months or four months' default. If you knock on a door and you see these individuals—and let us say we do up to 100 to 200 a month—and they have skipped and left their last known address your problems is if their debt was of one month's default it has suddenly escalated out to two or three months' default. Their ability to repay two or three months' within the time prescribed ends up with the vehicle being repossessed or orders obtained. So suddenly a small debt of $600 or $800 on a Yaris or whatever small vehicle you are talking about at that level has escalated, and they are only earning up to $1,000 or whatever a week but they have still got to pay their rent and all the other things so they are in a difficult position. If access were allowed, which is the biggest problem, in a lower court where the cost is not so prohibitive, and we could get access to the borrower or the customer whichever way you want to do it, the person has the capacity not to run up a debt that they cannot pay.

CHAIR: In a more timely manner?

Mr HOARE: Yes. Secondly, if you take a debt of any description, say, for example, judgement or whatever it is, say, it is $1,000, automatically I think it is put on VEDA.

CHAIR: What is VEDA?

Mr HOARE: A credit bureau. The credit bureau has listed that person. That person does not know he or she is listed. That debt might be a nominal debt for default on whatever it is a default on. If access to that person can be obtained easily be relocating that person, then their debt is reduced accordingly and they are not facing a debt that they cannot jump over. The Local Court Act was written, as someone said, in the dark ages and it is not concurrent with the current privacy legislation. Secondly, the access to—I would say if you took every debtor—I use the word debtor—and you are able to get to them, they would want to pay their debts. They do not want to default. They do not want to be listed on a credit bureau's listings. They want to keep their car or they want to pay their HSBC Woolworth's card or the ANZ card or whatever it is. They do not want to default. But when they move they forget about it, not deliberately—I do not say deliberately at all times, but most times they forget about it and then other things come in all the time.

Suddenly months go by, or years go by, and a debt of $1,000 has now escalated out to $5,000 or $6,000. I saw a debt of $2,000 go up to $10,000 in costs. The finance companies are able to add the cost of recovery of the debt to the thing. What I am asking is that if you look at the Local Court Act, to change the Act around so that the small claims division is able to grant orders for summons for discovery and also to order possession of the right of entry into a person's premises to take a car. I had to go and repossess, what do you call those things they put all the medical instruments in? I cannot think what it is where they sterilise the instruments. The tattoo parlour could not pay for this thing so I went up and repossessed that.

CHAIR: Autoclave.

Mr HOARE: I had to go and get an order in the general division. The debt was only $1,500 but so far with solicitor's costs and everything we are now up to about $4,500. What I am trying to say to you is that the small claims division should become more accessible. Another point I would like to make is that with the

closure of the local courts, if you take Manly, because I am now before the member for Manly, it only hears criminal matters. If you have a defended civil matter you go into Downing Centre—I call it drowning centre—and the cost of getting justice—there is no such thing as justice—the cost of getting an outcome is prohibitive. Going back to Mr Vine, he said that commercial agents should not have access to the courts or should not have the right of appearance. If I collect debt I go on commission or results only. I cannot add on cost on top of cost on top of cost. All I can get back is my disbursements and my collection fee.

If I have to run a small claims case, as Mr Sweet or Mr Vine said, the cost of preparing a statement, no person who is not in the industry can prepare a statement that is acceptable to an arbitrator or a person who can put that submission before an arbitrator or the magistrate in the Local Court. I believe that a commercial agent licensed through the Commercial Agents and Private Inquiry Agents Act should be entitled to appear and if necessary run small claims matters because it takes a solicitor out of the equation and a commercial agent's fees are fixed by their commission agreement with the client. We do not charge 50 per cent or 800 per cent; we charge a fixed fee. I would like to tender this statement that I have prepared, if I may.

CHAIR: Is that in response to this inquiry?

Mr HOARE: Yes.

CHAIR: That can be tabled. I have a further question.

Mr HOARE: Sorry, may I just say we do collection work for a toll company. I will not say who it is.

CHAIR: Do not mention the company, that is the thing you want.

Mr HOARE: When we first started it was a difficult process, and it was very difficult to get through the RMS to get the information on the number plates of the people who were driving the vehicle. As a result of our endeavours in relation to this particular toll company, because we are not actively involved in the collection of those tolls, and the people are aware that we are getting the information of who they are, we are able to ring them up straight away and say that a toll that was, say, $50 or $75 because they have gone through this particular tunnel on a few occasions, we have got on to them quickly.

Now we have had companies that have run up tolls of $10,000 to $15,000. We call it phoenix companies. Then they write off the company and we cannot collect the $15,000 tolls, but because we have not got on the collection of that particular debt very quickly, and because of the RMS's ability, under the Government Information (Public Access) Act—it is the Government Information (Public Access) Act in New South Wales; the Freedom of Information Act has now been shot through—we get the information under the Act of Parliament for that toll company and we have reduced the debts of this particular toll company significantly, right down to a bare minimum, through our activity.

CHAIR: Do you have any views on the effectiveness of sheriffs in executing writs and whether there are any other models used interstate which might be of interest to the Committee?

Mr HOARE: The Government has run the Sheriff's office down to basically 140, I think, on the sheriffs roll. I think through sickness there are only 100. I went out on a repossession of a property in Warringah and the sheriff—no, sorry, the sheriff was gone by then. Myself plus the locksmith plus two other people were locked inside the property by the owner of the property. We called the police. Two hours later we were eventually released from the property. The Sheriff's officer came back out. He has so much pressure on him to attend all these repossessions and do things that it is physically impossible for him to carry out the job. When I first started in the industry you had two Sheriff's officers coming out on every repossession of a house; now they are down to one. Secondly, if you dared to walk onto the property a Sheriff's officer would abort the repossession because you are in breach of the fact that possession had to be obtained through the Sheriff's office. Now the Sheriff's officer takes myself with a locksmith because he is scared to go in by himself.

If you asked me for a model, to me personally, the appointment of commercial agents or people like that who do not wear a uniform—this is my opinion; Mr Harries, who is behind me, might have a different opinion—I believe will lead to disaster because I believe a uniform of a police officer or a Sheriff's officer stops assaults. However, I know the Government is hell-bent on commercially putting the Sheriff's office out to tender through various organisations—I will not name them but the big organisations—and they will be run and taken over by those organisations, whereas I think there should be an independent body running the Sheriff's office

and doing those difficult jobs. A Sheriff's officer does not come on a repossession of a car because the court orders that the commercial agent can do it. We call the police if we have difficulties to prevent the breach of the peace. At the one I did at Warringah Road, the Sheriff's officer actually came back and he spent the rest of the day with us, with seven police cars turning up because the guy completely lost it in relation to the fact that his home was going. I have other views on the Sheriff's Office but I just do not think it should be abandoned.

CHAIR: How can that execution process be improved in your opinion?

Mr ROBERT FUROLO: More resources.

Mr HOARE: By the fact that you have a person who is appointed by the Government or through the Government who has a sense of authority who can cause things to happen, who can arrest and get results. A person in civilian clothes does not have the same respect as an officer in a uniform.

CHAIR: My question to you is: How do you think the Sheriff's Office could do its job better?

Mr HOARE: Appoint more officers.

CHAIR: Are their hours of operation currently effective?

Mr HOARE: They cannot do it because they are restricted. They do not have enough officers to go on the road, and they are out processing statements of claim between 9 and 5. Are you home between 9 and 5? People are only home who will get a summons after they have come home from work or after they have done their shopping, after four o'clock. They do not go out on the road after four o'clock. Their time is up.

Mr SWEET: Can I make a quick comment about Sheriff's officers?

CHAIR: Yes.

Mr SWEET: There is a lack of incentive on those officers. All they are interested in is making the call, nobody is home, they stick the card underneath the premises and they put a report back to you. The main emphasis is if you want us to go at it again you have to pay another $75—I cannot recall what the amount is now. I do not think they have any enthusiasm and they want to keep their head low. They are quite happy not to have any confrontation with a debtor. So there are all those types of problems that I notice. There is just not any result coming out of the Sheriff's office from any of the writs that I send out regularly.

Mr HOARE: There is absolutely no point is issuing a writ of execution to take someone's goods because it will never eventuate, and six or nine months go past without any results. It is a waste of time and money.

Mr JONATHAN O'DEA: Submissions have noted that a number of other jurisdictions, such as Queensland and the United Kingdom, have outsourced to private bailiffs. Are you aware of that, and the success or failure of private bailiffs in other jurisdictions, any benchmarking that is done across jurisdictions and any concerns that might have been raised about the operations of private bailiffs in Queensland, the United Kingdom and elsewhere?

Mr SWEET: I have no knowledge of how they work in foreign countries. I do not know whether Mr Hoare or Mr Bracey do.

Mr BRACEY: I do not have any knowledge on that. I will now get some. But the interesting part is that I think debt collection used to work very well prior to new legislation coming in and all these restrictions and everything else. People would go out there, particularly the commercial agents, and start about four o'clock in the morning knocking on the doors. The Sheriff's officers do not do any of that. As we just heard, they work between 9 and 5 and that is it. Consequently, it is a complete waste of time because people are out working obviously. We as an industry—again, the debt collection and commercial agency industry—would go out there in the morning and the serving process is exactly the same. We would go out there and the Sheriff's officers do not do any of that. And there is the major problem that you have got. I am just sitting here now and listening to what is being said, and quite plainly there is massive legislation that is effectively hampering the proper collection of debts. I think that needs to be looked at and there needs to be further very, very serious consideration. As I said before, we put a man on the moon; we can solve it down here.

CHAIR: The Committee may wish to send you some additional questions in writing, the replies to which would form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions the Committee may have?

WITNESSES: Yes.

CHAIR: The Committee has resolved that answers to any questions taken on notice and additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. That concludes our questioning of you today; it has been quite entertaining. Thank you for appearing before the Committee and I wish you well.

(The witnesses withdrew)

ALAN KEITH HARRIES, Chief Executive Officer, Australian Collectors and Debt Buyers Association; Executive Director, Institute of Mercantile Agents, sworn and examined:

CHAIR: Thank you for appearing before the Committee today to give evidence. Can you advise the Committee in what capacity you are appearing today?

Mr HARRIES: I am the chief executive officer of the Australian Collectors and Debt Buyers Association and concurrently I am also the executive director of the Institute of Mercantile Agents—two very different associations but they do have similar members at times and they contract to my organisation to provide the management structure.

CHAIR: I draw your attention to the fact that your evidence is given under parliamentary privilege and that you are protected from legal or administrative action that might otherwise result in action in relation to the information you provide. I also note that any deliberate misleading of this Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. Before we commence questions would you like to make a brief opening statement, taking into account that we have read your submission?

Mr HARRIES: I will not repeat everything that is in the submission. I have had the benefit of sitting in with the last couple of witnesses and I have heard a little bit of the colour that comes through any discussion about debt recovery in New South Wales. From our organisations—and I speak for both of them in this regard—the biggest problem for our members in our organisations is about licensing. Being a commercial agent there is no doubt that the Commercial Agents and Private Inquiry Agents Act 2004, which is a rewrite of the 1963 Act, is inadequate and bureaucratically very difficult for people to get their head around. Time has moved on; we do not collect debts by riding on bicycles around town, we do not write up debts on an 8 x 5 index card; we do use computer systems, we do use autodiallers, we do have big call centres that would be the envy of most large organisations.

The legislation does not quite understand how to regulate that and that is one of the reasons both groups have come to this view that we need to do something about licensing in regard to the people that never see a debtor face to face—they talk to them on the phone, they email them and they SMS them. We believe they should be negatively licensed as they are currently in Victoria and, more recently, an Act has been passed in the Queensland Parliament on 6 May introducing negative licensing for those engaged in telephone debt collections with no face-to-face contact with debtors. But the difference in Queensland—our organisations were successful in encouraging the Attorney General up there to introduce or retain positive licensing for field agents. We believe there is still a requirement that when people knock on a door a debtor is entitled to understand who it is that is knocking on his door: is it a fit and proper person? For that reason, we think there should be positive licensing when you have a face-to-face dealing with debtors.

That is about making sure that you look after the public interest. We all live in a home, we are all a little bit anxious when somebody knocks on the door after hours; we want to know what their bona fides are. That is the reason we are suggesting that field agents should be positively regulated. The other thing that I would like to spend a bit of time talking about, which I am sure will come up after the last two witnesses, is about access to information. No collection action can happen unless you know where the debtor is. If all else fails, it falls by the wayside: if you cannot find him you cannot collect from him. That is a critical part of the work of commercial agents. Whether you act for governments—our members do; whether you act for banks—our members do; whether you act for individuals—that is what our members do as well, no-one can do anything about collecting a debt unless they can find the debtor.

CHAIR: Do the current systems assist or hinder you in locating absconding debtors?

Mr HARRIES: There is no doubt it hinders the collection of debt. I might spend a little bit of time, just in terms of education here, to talk about debt buying because people do not really understand that in this modern era. Past witnesses have talked about contingent collectors that are collecting on a commission basis, no success no fee, and that is the traditional model that has been around in Australia for a very long time. For about the last 10 to 15 years there has been an evolving market where people sell off their debts to commercial enterprise at a discount, and typically the people that sell debts are not one-off creditors with one debt, they are typically large banks, finance companies, utilities and telcos who sell large batches of debts typically in the hundreds of thousands of accounts with a cumulative face value at any time of multi-million dollars.

They sell those debts at a discount and the reason there is a discount is, first of all, it is an outstanding debt and there is no guarantee that they will ever get paid, but the biggest issue for them is that for most of those creditors they cannot find the debtors. Even the debt buyers when they buy the debts, my members tell me that typically when they buy a batch of debts, 30 to 35 per cent of the debtors can never be located due to being lost in the privacy world—hidden from any record keeping at all that is accessible to commercial agents. So when you look at the volume of the debts—and my submission makes reference to how a survey of our members showed an annual indebtedness around Australia of accounts under collection approaching $9 billion a year—when you consider how many of those accounts will never ever be collected you realise that those of us that pay our bills are paying a little bit more for those that are not. Not everyone that does not pay a bill is necessarily a criminal—or a debt criminal, as we heard them referred to earlier; there are some that will not pay but there are an awful lot of people who cannot pay. It is about talking to those people and helping them along the journey to get some satisfaction of the debt.

CHAIR: You spoke about licensing. Do you have any views as to who would be the appropriate body to supervise that licensing regime?

Mr HARRIES: Around Australia there has been a mixture over the years—it started out traditionally with police and it has gone to Fair Trading, in Victoria it is Consumer Affairs Victoria, in Queensland it is the Office of Fair Trading, in South Australia it is Consumer Affairs that look after it. So I think commercial agents have more of an affinity with Fair Trading legislation than they do with policing. If I can just make this statement for the record: Commercial agents and private agents have absolutely nothing to do with security—never have and never will. It is just some nonsense that somebody has decided that security agents and private investigators are doing the same work; they do not do the same work, there is nothing in common between the two except in New South Wales where they are regulated out of the same department.

Mr ROBERT FUROLO: Thank you for your very comprehensive submission. There is a statement in your submission that the collections sector treats its obligations under the guidelines of ASIC and the ACCC as law and structures its compliance systems with the guidelines at its centre. Are you aware of any enforcements that have been undertaken by the ACCC or ASIC under those guidelines?

Mr HARRIES: ASIC has taken a couple of actions against industry members. The most newsworthy of them was in the last couple of years they took an action against a company called ACM Group, and that was about unconscionable conduct and harassing telephone calls and the like. Interestingly, they certainly were successful in a Federal Court action against that company. The behaviour had ceased, the Federal Court found, but that company still continues to hold an Australian credit licence issued by ASIC, so ASIC would want something to say that the company is no longer a fit and proper company to do the sort of work that they do.

Quite correctly, people made comments that the guideline—and, I might add, the most recent version of that will be released on 5 July by ACCC and ASIC; they sent out a pre-publication copy to stakeholders last Friday, and that is just bringing the guideline up to the Australian consumer law standards. They have heard the industry's views on a number of things. For example, prior to the current soon-to-be-released version, it was illegal under the guideline for a debt collector to ring you and say, "Hello, I'm Alan Harries. I'm a collector, I need to speak to you"; the guideline required that we ring the debtor and say, "Are you John Smith?" If he says yes, we say, "Before I talk to you I need to identify you. Would you mind telling me your date of birth?" John Smith says, "Who are you? You've just rung me. I don't know who you are. What are you ringing for?" The guideline prevented us, as do the privacy laws, from speaking to an individual on the phone and disclosing our occupation because it might be harassment that the person we are speaking to, even though he says he is John Smith might not be John Smith and we cannot say anything that would cause others to know that John Smith might potentially have a debt that he owes.

It is pretty obvious that that is a circular merry-go-round that debt collectors have many hundreds of times every day of the week. So ASIC and the ACCC have now accepted that it is appropriate when we ring John Smith and John wants to know who is calling that it is okay for us to say the name of the business we work for. That overcomes a fair bit of the sting in the discussion. Debt collectors are interested in talking to people. If we cannot talk we cannot solve the problem. Gone are the days of people running out to start litigation. That is not the norm in debt collection in Australia today. The norm in debt collection is writing to people, ringing people and talking to them and getting engaged in a conversation to talk about what are their assets and liabilities, what is their income, what is their expenditure, what can they afford to pay. It is all about conversations.

Mr ROBERT FUROLO: How important do you think it is for nationally consistent laws?

Mr HARRIES: I think it is very important. In fact the Ministerial Council on Consumer Affairs had a project on national harmonisation of debt collection laws about three years ago. We did a lot of work on that program, and indeed that is where we developed the negative licensing and positive licensing recommendations. Unfortunately, when the ministers and their support staff got together, the one thing they could agree on was the fact that they could not agree on anything, so in New South Wales, for example, the then Minister for Police wrote a one-paragraph submission to the inquiry supporting negative licensing. "We support negative licensing" is what the Minister wrote.

Victoria said, "We will do everything, but we are not going to do anything other than negative licensing." Western Australia said, "We are not going to do anything other than positive licensing." So they all decided it was a State- and Territory-based responsibility and they would all go and do their own thing. Slowly but surely we now see Queensland coming on board to get consistency, and we hope New South Wales will follow suit very soon. We want them to follow suit for a number of reasons. One is to remove the bureaucracy but, as a New South Welshman, I would hate to see the leakage of jobs out of New South Wales to Queensland and Victoria simply because of easier licensing in the industry.

Mr ROBERT FUROLO: Going back to Australian Securities and Investments Commission [ASIC] and Australian Competition and Consumer Commission [ACCC] guidelines, if organisations like yours and your member businesses had those guidelines at the core of their operations, would there be any problem with making them the law or making them mandatory?

Mr HARRIES: I do not think there is any problem with making them law other than they are a living and breathing document that is constantly reviewed. One of the problems with taking a version of a document as it exists today and putting it in legislation is that it sits there, the legislation never gets updated and it continues on. Where our industry finds importance of the guideline is not so much that it is not law, but almost all of the work in the industry is done by service agreements with clients, which are typically banks and finance companies, and their codes of practice determine that their collectors must follow the guideline, so it is a requirement that the guideline must be part and parcel of their contracts, so they sign off on it. They regard it as sacrosanct. One of the groups that I represent, the Institute of Mercantile Agents, over the last two years has started developing best practice guides. They have done their repossession one and are currently working on their process serving one, and adherence to the guidelines produced in current form by ACCC and ASIC is an underpinning principle of the best practice guide for members.

Mr ROBERT FUROLO: If the guidelines are not mandatory and if licensing is done on a reverse proposal, as you have suggested, what protection is there for the debtor and what scope is there to stop someone from operating in the space and not comply with the guidelines if they are not licensed?

Mr HARRIES: Sure. We will make a difference between debt buyers and debt collectors. Debt buyers are actually licensed under the ASIC regulations with an Australian credit licence, so they are very heavily regulated—no question about that. On the collection side, an agent is exactly that: the agent of a principal. The bank, the creditor, is the principal responsible for all of the reasonable and inferred actions of the agent. So if there is a problem with anything that the agent does, a debtor or any other member of the public can always go back to the principal to make a complaint. So that is the first thing, but we do not operate in a vacuum.

We have fair trading laws, we have the criminal code, we have corporations law—we have a myriad of legislation that commercial agents are obliged to meet, just like every other good corporate citizen is obliged to meet. If they are doing something wrong and they intimidate somebody or act in some sort of assault, there is a criminal law that will apply for assault. I do not think there is any evidence of persons ever being licensed under the 1963 and then the 2004 Commercial Agents Act where people have been taken to account for their behaviour. If there was anyone taken to account for any sort of behaviour, it would generally be done under the criminal law anyway for assault.

Mr STEPHEN BROMHEAD: There has been some discussion with previous witnesses about whether the jurisdictional limit should be increased from $10,000 to $20,000 in the Small Claims Division. There was also some discussion about whether or not commercial agents should be allowed to appear in court. What is your view on those issues?

Mr HARRIES: I learned a little bit from the first witness, Mr Vine. He explained something to me that I did not quite appreciate, which was about the limit on legal costs, so now I can understand why some of the lawyers are a bit anxious about the 25 per cent loading on legal costs. Logic says to me that in this day and age $20,000 is not an excessive amount of money and the vast majority of debts are going to be under $20,000. I can understand the small claims being increased in jurisdiction, that makes sense to me, given that time has marched on and we all know that our dollar today is not worth as much as our dollar 10 years ago. So that is the first issue. In terms of commercial agent appearances, I think that they should have an appearance. I do not think any commercial agent would ever want to run a defence; I really do not think that at all.

What they do want to be able to do is issue the statements of claim, go and do the pre-trial conferences, do the instalment orders, the examinations and the like, but if they are going to do it they need to be able to recover a fee and in my view it should not be a commission-based fee for that sort of work. It was interesting to hear of the commercial agent in Sydney who got a $40,000 commission. I did wonder how many other accounts he worked on that he got no money for, but that is beside the point. It is about relationships and arrangements, but I think if you are going to have anyone appear in court it has to be a fee-for-service basis to protect the debtor because ultimately if the debtor is found guilty of having to pay the debt then they are going to be responsible for those costs.

Mr JONATHAN O'DEA: I think the point that was made previously is that there may not be any extra costs because the system has already paid through a commission arrangement.

Mr HARRIES: That may well be the case. Ultimately, I do not work as a debt collector these days, so I do not know how they would price that, but I would imagine that most collectors now use law firms, and in fact some of them would even own law firms.

Mr JONATHAN O'DEA: I have two lines of inquiry, one in relation to outsourcing functions of the NSW Sheriff to private agents and, hand-in-hand with that, potential benchmarking against other jurisdictions or comparisons with other jurisdictions where private bailiffs may have been used. Are you across those issues and can you comment?

Mr HARRIES: I think most witnesses are going to sit before you and tell you that they do not have benchmarking personal knowledge. What I can say to you is that Western Australia outsourced the Sheriff's function about four and a half years ago. A public company by the name of Baycorp Australia Pty Limited is the licensee that has that function in Western Australia and they collect not only the enforcement of debts over there but they also collect all the State's fines and penalties in that jurisdiction and my understanding is that their first period of contract is coming up for renewal—I think it was a five-year contract—and it certainly seems to be working, from all reports.

I understand that South Australia has been similarly looking in that State. I do not know whether that has come to fruition as yet. In Queensland it is a longstanding arrangement where bailiffs in Queensland are privately employed and they do certain functions within the courthouse as a bailiff and then they go off and do their private work as well. How long that has been going on I do not know, but I joined as a commercial agent in 1984 and I met fellows that were private bailiffs in Queensland in 1984, so I think it is a longstanding arrangement and no-one seems to be rushing to make it a public enterprise activity.

Mr JONATHAN O'DEA: Do they wear special uniforms? The issue of status and preventing assault is one that I think needs to be addressed.

Mr HARRIES: My understanding is that in Western Australia if they do not wear a uniform they most certainly carry clear identification that they are sheriff officers and they also maintain offices where they have signs up as the Sheriff's office, so it is a very clear public statement as to their activities. I cannot answer for Queensland because I have not been on the road, but I would be surprised if they are running around in sign-posted cars or anything like that.

Mr JONATHAN O'DEA: You mentioned that in Western Australia they have outsourced recovery of government debt as well as potentially moving to the private bailiff sort of model, but in New South Wales my own experience or perception is that the Government certainly has an advantage over the private sector in collecting debt.

Mr HARRIES: You do at the moment, yes.

Mr JONATHAN O'DEA: Yes, in particular through the State Debt Recovery Office and that extends particularly with Roads and Maritime Services and potentially other areas. Do you think the distinction is fair between debt collection practices for businesses, debt collection practices for government and indeed for individuals? You have businesses, individuals and government and there is a distinction between all three potentially on the way they can go. Do you think that is fair, or do you have any observations or comments in that regard?

Mr HARRIES: I will put it to you this way: That desk is flat. We could all sit at that desk and put our pen on it and it would not roll in any direction. None of us would have an advantage. You have answered your own question I think by pointing out that the Government does have an advantage in collecting debt in this State which is over and above commercial enterprise or individuals. I would think that it is not a level playing field, but that could be easily fixed. You could certainly introduce a system whereby commercial agents have access to information. That could be a fully auditable system of access and indeed it could even bring income to the Government, and the Government does need income, which we understand.

For example, currently the Attorney General's Department sells off judgement information to credit bureaus to populate the credit bureau information. They receive a commercial fee for doing that. Similarly, that sort of information could be on-sold to credit bureaus or other similar information brokers who would then on-sell to a very clear client list of commercial agents providing a list and identifying for every transaction as to the reason why information was gathered, what was released and at any time having an audit trail as to who got that information, and I can tell you that commercial agents and their clients would pay a commercial fee to get that information because they cannot commence on any recovery action unless they find the debtor.

Mr JONATHAN O'DEA: You have said that the Government, in an ideal world, should be on a level playing field with others. Do you see that there is a distinction between debt collection practices for businesses and debt collection practices for individuals, and what distinctions are there, and should there be any distinctions, if you can apply similar philosophy?

Mr HARRIES: This might be an answer you are not expecting, but yes, there is a difference. One of the differences is in the filing fees that the courts charge. If you are a plaintiff that is an individual, you pay a filing fee. If you are a plaintiff that is a corporation, you pay double the filing fee. You would say that makes sense, they are big business, they can afford that, but if they are successful as the plaintiff it means that the defendant is going to pay those fees, so double-dipping against the corporate plaintiff has in fact incurred a greater cost on the judgement debtor who ultimately pays those fees. I am not sure that was the answer you were looking for me to give.

Mr JONATHAN O'DEA: My question is not loaded.

Mr HARRIES: That is good. In terms of most other debt recovery, it is fairly equal other than the fact that, obviously, individuals do not have the experience that corporate and finance companies that are repeat plaintiffs do have in navigating their way through debt recovery processes.

Mr JONATHAN O'DEA: If anything, I would argue that government has been somewhat hypocritical in allowing itself to engage in certain practices that it does not allow private individuals or businesses to.

Mr HARRIES: Yes.

Mr JONATHAN O'DEA: Perhaps that is a matter for deliberation?

Mr HARRIES: Yes. That might be a philosophical sort of argument from time to time. At the end of the day, I do not believe privacy is about allowing people to escape their responsibilities. When I borrow money from Westpac, RAMS or whatever, I give an undertaking that I am going to repay my debt. I do not do that knowing or with an expectation that I could move house and hide behind privacy to avoid paying that debt. I think most of us who have a mortgage do expect that we are all paying our fair cop of that mortgage and that we are not paying for those who do not. Unfortunately, a consequence of privacy is that a lot of records are not available. I did hear somebody make reference to the electoral rolls.

Previously, electoral rolls used to be stock in trade. You just go out and buy a copy of the rolls and you would have it in your office and you would work through the local roll. When the new election came in you

would race down to the Electoral Office with a whole list of names to see where they have moved to, to see if you could jag the debtor to find where they have gone. Nowadays those rolls are not available and the Electoral Commissioner has taken the view that people could only look at their own records and correct their own record. So the politicians amongst us can ring me leading up to the elections and try to convince me to vote in one particular way or another.

Mr JONATHAN O'DEA: Previously, it was suggested that increased access to information, whether to locate witnesses or debtors, might be restricted to matters currently before a court or tribunal. Do you have a view on that?

Mr HARRIES: Here is the problem: How do you start the procedures when you cannot find the person? I am going to go back into ancient history about a job I did. I was acting for a legal firm that was acting for an insurance company. The solicitor said, "Alan, we've got a bit of a difficult job. We've got a fellow who's standing at a pedestrian crossing pressing the button to cross and while he's there a fellow drives past in a utility, he's a brickie and he's got an unrestrained dog on the back of the ute. The dog jumped off and savaged the bloke at the pedestrian crossing. Now we need to start an action against that fellow, but we don't know his name. All we know is his registration plate." Now the solicitor said, "To get information from the former RTA I can, as a lawyer, get that information provided I sign a certificate to say that it's in connection with a motor vehicle accident. But, in fact, it's not a motor vehicle accident; it's a savage dog attack in the public street. I can't sign that.

As a solicitor, I'd be swearing a false declaration. What can you do?" We could not do anything. In that particular case I think they ended up taking an action against the Nominal Defendant under the CTP insurances. But there is a very not usual case but not an unusual case either. You do not know who the party is other than that they are the driver of a particular registered motor vehicle. Until you do the search, you have not got a named defendant. You cannot put on your plaint "The owner of registered vehicle ABC 123." You have to name somebody and have an address of service. If you do not start the process to give discovery until after a plaint has been issued, it seems to me there is an awful lot that will fall by the wayside.

Mr ROBERT FUROLO: The recurring theme in this morning's evidence is the issue of access to information and identifying debtors. If the legislation were changed or new legislation introduced or regulations enabled debt collectors and others in the industry to access this information freely, and we go down the path also, as suggested, of having a reverse licensing system, it seems that we would be giving increased access to very sensitive information and removing our capacity to penalise people for misusing that information. Does that seem to be a fair summary?

Mr HARRIES: I hear where you are coming from. Again, I revert back to the fact that we are not operating in a vacuum. Almost every commercial agent in New South Wales, I am only talking about New South Wales but it does go wider, is a corporation and obliged to meet various corporate obligations under Corporations Law. They are in the business of being a trader, so they must meet Fair Trading laws. They come under the requirements of the Trade Practices Act, or as it is now known, the Australian Consumers Law. There is plenty of opportunity for the corporation to be compliant. Almost all commercial agents these days need to have full-time compliance managers to keep abreast of all the different compliance obligations they need to meet.

I can assure you that in mainstream commercial agency, if they get the opportunity to make those searches, it will be done in a proper and business-like fashion. That is not to say that, like in any other occupation, there will be others who might try to do the wrong thing, but we as an industry group would be encouraging the relevant regulator—in this case it would be, as I suggested, the credit bureaus or an information broker—would have to be responsible for who they give access to and be held accountable for that. I think there are ways around it. I am not saying it is easy, but I do not think it is insurmountable.

Mr ROBERT FUROLO: Earlier witnesses identified logjam issues in the Office of the Sheriff. Is that the experience of your members and have you any approximate numbers?

Mr HARRIES: Yes. I can only go on stories I am told by my members. They do say that it is a problem. Yes, I have a lot of sympathy for the Sheriff's officers as well because one of the overwhelming responsibilities they have is court security. Given they are dealing with people in emotional turmoil, the chances of incidents of violence are heightened. So that does have to take some, I suppose, precedence in their responsibilities. But there is a problem with continuing underfunding of the resourcing for the Sheriff's function.

But also against that, the Sheriff's function needs to be as efficient as it possibly can be in this modern era. That means improving their technology, improving their industrial relations with their unions and making sure people work to proper work practices. But in a town like Sydney, knocking on people's doors to do that sort of function is pretty dangerous work.

I can understand why sheriffs would want to go out two out to do some of that work because it is confronting work. That does create logjams. If you are only working eight till five, we all understand no-one is at home. So we have to do something around that and our view is that outsourcing to private enterprise will open the doors to get coverage outside those hours because commercial agents do that now. They go out and they serve process and they repossess cars and equipment at all hours and they do it responsibly.

CHAIR: In your submission you comment on the growing misuse by consumers of the external dispute resolution process.

Mr HARRIES: Yes.

CHAIR: Could you outline what misuse you have seen and how it might be remedied?

Mr HARRIES: The EDR schemes, and there are only two of them, there is the Credit Ombudsman Service [COS] and the Financial Ombudsman Service [FOS], are both regulated by ASIC. One of the requirements of the two schemes is that, first of all, for somebody to make a complaint to those schemes, they can only make a complaint about a member of the scheme. One of the requirements of the schemes is that if a complaint is lodged by a consumer, the member must automatically stop all collection activity regardless of the stage of the activity, except in the event of a statute of limitations going to bar the debt. That means you could be down the track with default judgement, you could be with the sheriff on the doorstep taking the property and the consumer then raises through their consumer advocate a complaint.

It goes to FOS or COS and immediately the creditor must stop all action. One of the greatest EDR schemes we have has been around for a long time. It is called the court. That is what a court is. Many in my industry would say to you that the EDR scheme is very much taking over what the jurisdiction of the court is to do. I understand that quite a number of magistrates have a bit of an intolerance towards being told that the matter is being parked out of the list because somebody has made a complaint to the EDR scheme. We have all probably seen on the TV these credit repair businesses: "You've got a bad credit reference, talk to us. We'll get your listing cleaned."

What they do is go to the creditor and the creditor says, "Well, we can't clean the listing because there was a default and my obligation to the credit bureau is that I must keep that information honest and I can't withdraw it." The credit repairers then lodge a complaint through either FOS or COS that they have a complaint and they want this credit reference record sorted out. What happens, the way the EDR schemes work, is that the members pay basically a flag fall when the complaint is received and then it goes through stages of investigation and resolution. The longer it is in the queue, the higher the costs to the member concerned. The starting point is about $165 for a complaint and it goes upwards, sometimes up to $5,000 in costs. It gets to the point where it is a commercial blackmail: "Remove the credit listing and we'll withdraw our complaint."

The way I think that could be easily fixed up is to introduce a fee to the EDR schemes that in the event a consumer makes a complaint and it is not found to have any basis, that they do not get that fee back. If they pay a fee and the complaint is founded, they are refunded that fee by the member. In other words, have a little bit of user pay in there and maybe it will be an honest user that will be happy to pay.

Mr JONATHAN O'DEA: If you pursued that model, do you say "no basis" or "no decision" in their favour? There probably is a difference.

Mr HARRIES: I like your definition a little bit better: no decision in their favour.

Mr JONATHAN O'DEA: That is not what I was suggesting.

Mr HARRIES: I know that.

CHAIR: Thank you Mr Harries. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions we might have?

Mr HARRIES: Yes, more than willing.

CHAIR: The Committee has resolved that answers to questions taken on notice and additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. Do you understand that?

Mr HARRIES: That is fine.

CHAIR: Thank you for appearing before the Committee. That concludes our questioning.

(The witness withdrew)

(Short adjournment)

MONIQUE HITTER, Executive Director, Civil Law Division, Legal Aid NSW,

ELIZABETH MORLEY, Principal Solicitor, Redfern Legal Centre,

WILLIAM DWYER, Credit and Debt Solicitor, Redfern Legal Centre, and

ALICE LIN, Solicitor, Financial Rights Legal Centre, affirmed and examined:

CHAIR: I welcome our next witnesses, Ms Hitter, Ms Morley, Mr Dwyer and Ms Lin, and thank you for appearing before the Committee today to give evidence. I note that the Committee has received an updated submission from Legal Aid NSW, is that right?

Ms HITTER: That is right, Mr Chair.

CHAIR: Is it your request that this submission should replace the original submission that was presented to the Committee?

Ms HITTER: Yes, please.

CHAIR: That can be included in our papers and be updated.

Ms HITTER: Thank you.

CHAIR: Just before we start I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in action in relation to the information you provide today. I also note that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. Before we commence with any questions, Ms Hitter, would you like to make a short opening statement, assuming that we have read the submission, on the key points you would like us to address today?

Ms HITTER: Yes, please, Mr Chair. Legal Aid NSW provides advice and assistance in over 190 locations across New South Wales, both within Legal Aid offices and in outreach locations. Debt is a major issue that we deal with. In 2013 we saw over 15,000 people in relation to consumer and other sorts of debt issues. We recognise that debt is a major issue for the community. Debt is a leading contributor to homelessness. Homelessness is a leading contributor to recidivism and family breakdown and other issues such as that. As economic times get tougher, this will no doubt lead to more pressure on those who cannot repay debts but also on the commercial, government and community sectors. Ultimately the cost is borne by government in the form of both the loss of revenue for businesses and in needing to provide support for people in hardship.

The Committee may be aware that the national trend is to treat financial hardship and debt in a way that is more commercially viable and at the same time humane. These two things have been shown to coincide very well together and in our submission on page 20 we give you an example of innovative ways of dealing with debt issues, particularly for people in long-term financial hardship. We see this inquiry as a very important opportunity to consider this trend in the context of New South Wales and in a smaller commercial context. First, if I could just outline who we are principally talking about and why we are talking about them.

We are talking about a particular section of the community who have complex needs, who are reliant on a safety net and who are in a cycle of what we would call disadvantage in terms of the issues that they are having to deal with where their needs are not being met; their basic needs for shelter, for income—we see those needs, resulting in an increased cost to the community in terms of the things that happen to people who are not able to meet those basic needs.

Also within this group, we like to distinguish between those who have been able to assert their rights in the debt recovery process and those who have not. In terms of the key reforms that we would like to see and why, we would like to focus on three key areas, if we can. First of all in relation to fines, we would like to make the point that the current work and development order program and system is working very successfully and effectively and we certainly support that approach. The results show that it is far better for the individuals involved but also for the community as a whole, and it also saves costs for government in terms of enforcement.

The second area is in relation to small debts and property seizures. We would like to see an expanded list of protected items to the current system, which is causing more hardship and costs, to support families in relation to assets that are seized, which we would consider to be protected and ultimately have no or very little commercial value. The second issue is in relation to increasing the amount debtors can retain, and needing to properly consider the amount that debtors should have left over once money is taken out in order to repay debts in order again for them not to be left in severe financial hardship and then result in other costs to the system.

The third major area we would like to concentrate on is in relation to assisting debtors to participate more fully in the recovery process. This will lead to better commercial outcomes. It will result in less hardship and strain on other parts of the government sector and it would include better referral points for assistance, clearer procedures for both debtors and creditors and the use of external dispute resolution schemes where appropriate. I note that the witness before us spoke a little bit about external dispute resolution schemes. We are a strong supporter of them in terms of them providing a specialist jurisdiction to resolve debt issues. They are very cost effective. They are an excellent forum for our clients, who are often unrepresented. I would draw the Committee's attention to the draft report of the Productivity Commission inquiry into access to legal services, which speaks very favourably of external dispute resolution schemes as a way of resolving certain debt issues. Thank you.

CHAIR: Would anyone else like to make an opening statement?

Mr DWYER: I echo those same sentiments. In concert with my colleague Ms Morley, I would like to explain a bit about who Redfern Legal Centre regularly sees. We see vulnerable and disadvantaged clients who are struggling to make ends meet—most are dependent on Centrelink as their sole source of income—and where they have incurred debts to basic services: utilities, telcos and types of consumer credit products, and a range of other basic living expenses. They are often faced with great difficulty in being able to maintain basic living expenses and to repay those debts. It is important to strike a balance between a creditor's right to enforce their right to recover a debt as well as the protection of vulnerable consumers as part of the legal process.

We think it is important to increase the current protections for vulnerable consumers, particularly against garnishee orders, both through the Local Court process and also through the State Debt Recovery Office garnishee power. We think that it is very important that there is a proper appraisal of a consumer's actual financial circumstances before a garnishee order is made. There needs to be an assessment of someone's financial capacity, what their basic living expenses are and what dependents and other basic costs they have such as rent, food and keeping the power on. That should be done before any garnishee amount is arrived at.

Ms MORLEY: If I might add to that? I would point out that we have clients who are also creditors—people who lend money to friends or who have not been paid by their employer or who have recovered through NSW Civil and Administrative Tribunal [NCAT] an order against their landlord or something like that. We have got international students who have been duped out of their money by boyfriends and we are trying to recover that money. So we have experience of this from both sides of the coin and our recommendations take that into account. We believe that those recommendations would actually benefit and give our creditor clients a better option in getting a true picture of their prospects of getting the money back, not spending extra money on writs being issued and garnishee orders being issued that are not going to produce anything for them.

On top of that we would point out that a lot of the recovery process is based on historic patterns of, for instance, pay—when people took their pay packet home in an envelope in cash. When a bank account, for instance, was something very different—a bank account was a savings account that only the relatively well-off had. Now, of course, your pay packet or your Centrelink payment goes straight into that bank account. Unfortunately, your bank account is available to the garnishee whereas your pay packet has some protection on it.

Ms LIN: I am representing the Financial Rights Legal Centre. We are a specialist legal centre so we focus on the area of consumer credit: personal loans, mortgages and debt due to utility bills and those sorts of things. We gave more than 20,000 advices in the last financial year. This ranges from people who have only just received the first overdue notices through to court action, enforcement and bankruptcy as well. We appreciate the opportunity to be part of this consultation and hope that community legal centres like ours continue to be funded to participate in these sorts of activities in the future as well. In terms of our priorities for this inquiry, again we also agree that there needs to be a minimum safety net of both essential assets and also income, particularly for people on welfare benefits. It is also giving the debtor, being given notice of the proceedings of judgement and enforcement action, an opportunity to get proper legal advice. We also agree with Legal Aid's

submissions in relation to enforceable standards for debt collection activities with appropriate avenues for address such as accessible dispute resolution mechanisms and appropriate government oversights. We also strongly oppose any moves to look at outsourcing or privatising the Sheriff's department.

Mr STEPHEN BROMHEAD: My question comprises several parts. The first part being that there is a proposal to increase the jurisdiction of the Small Claims Division from $10,000 to $20,000. Do you agree with that and what will impacts of that be?

CHAIR: Perhaps the witnesses can respond to the first part of the question before you continue. Have you got any thoughts about the jurisdictional limit?

Ms MORLEY: My first response would be that I think it would be a good idea. Inflation catches up with us. Certainly for unrepresented litigants I think the risk of being pushed over into the General Division is something where I have seen people actually decide to not claim the total amount of the money they are pursuing to keep things in the Small Claims Division. My first response, subject to comments from my colleagues, would be that I think it would be a good idea.

Mr STEPHEN BROMHEAD: The second part of my question is that commercial agents and others have suggested that they be allowed to appear in civil proceedings before the Local Court. Do you support that recommendation for routine debt matters that proceed directly to default judgement or otherwise? Would you have any concerns about commercial agents rather than legal practitioners preparing and filing routine matters in the Local Court? Would you have any problems with commercial agents appearing at call-overs, pre-trial reviews and pre-hearing matters? Alternatively, they appear in all the matters, including the hearing?

Ms HITTER: My initial response to that would be that on behalf of unrepresented parties there would be a power imbalance and that would be of concern. I guess thinking about the professional responsibilities that a lawyer has compared to whatever professional responsibilities a professional agent might have, that there may be a difference in the standard of approach to those matters between a commercial agent and a solicitor. I am mindful though of the costs associated with retaining a solicitor for both commercial parties and other parties, but I would be concerned about a commercial agent being used where the party is unrepresented.

Mr STEPHEN BROMHEAD: What about for the initial things such as pre-trial call-overs, putting aside the actual hearing of the matter?

Ms MORLEY: In the Small Claims Division a lot of the things get done at the pre-trial stage. There is a lot of attempt to resolve matters. The actual hearing then proceeds basically on written information provided. I would like to think the agents would act in an ethical and fair manner. Our experience, I think, would say that that is not always the case. I echo Ms Hitter's concerns around the obligations on a legal practitioner and the ethical obligations and the duties to the court to set a higher standard one would hope they would comply with than are on an agent. I would have some concerns, as she has expressed, about what might happen at those earlier stages. But again I appreciate keeping the costs down it would require a much more activist role by the court in actually being proactive in making sure that the process is fair and that a level of badgering does not happen outside the courtroom or something like that. I do not see how that could really effectively happen in a busy Local Court.

Mr DWYER: I know from the experiences of some of our clients they are already very intimidated and anxious about dealing with a debt collector. They get escalating letters of demand and quite often the reason they do not respond to them and the default judgement is entered is because they are apprehensive about going to court and getting involved in the legal system. I think there is a risk that where they feel they have to go to court and speak directly with a debt recovery agent that that might add to that sort of anxiety and disengagement in the process.

CHAIR: How can that situation be improved as they have already been contacted and are not engaging?

Mr DWYER: I think by having an opportunity to get legal advice from Legal Aid or the Community Legal Centre and have someone advocate on their behalf, as well as financial counselling which I think is an essential part of the mix. Quite often these people have low levels of financial literacy and have got themselves into troubles, they do not understand the process, and where they can have someone explain it to them and help

them to engage and speak on their behalf to the creditors, and negotiate a fair, reasonable and commercial sensible outcome, I think it is in everyone's interests.

Ms MORLEY: Our experience of collection agents is that they often have no connection with how the debt was originally entered into. They provide a number of threatening or intimidating outcomes potentially to the person if the matter proceeds. They are people who end up agreeing to make payments without being aware that, for instance, the debt may be statute barred, may never have been owed, maybe ought to have been challenged before and when they do agree to repayments they are often for amounts that they cannot sustain so the whole things falls over rather than entering into an agreement for payment that might have been able to be sustained from the get-go.

Mr ROBERT FUROLO: A number of submissions, particularly from debt collection associations, have suggested that a reversed licensing system should be implemented for agents acting for debt collectors. What is your view on that? What are your concerns?

Ms MORLEY: I think I would have to take that one on notice. I have not applied my mind to that one and I would have to think about it.

Ms HITTER: Yes.

Ms MORLEY: We are happy to do that.

Mr ROBERT FUROLO: I think it would be terrific for this inquiry for the collective organisations to provide a response on that issue.

Ms LIN: I can provide an initial response now. In terms of negative licensing we would prefer that to an absence of licensing at all. You would have to look at how the different debt collectors are regulated at the moment. For example, creditors are regulated under the national consumer protection Act and have obligations to be in external dispute resolution schemes and to have those processes where consumers do have address and ASIC is the government regulator for those kinds of companies. The concern would be the other debt collectors that do not form a part of those claims of oversight systems so that needs to be—

CHAIR: Would you please speak up?

Ms LIN: I was making the point that we would need to distinguish between the debt collectors that would be regulated under the National Consumer Credit Protection Act and those that are not. In terms of debt collectors who are already regulated by that Act, we would not object to consolidating the obligations under, for instance, the Commercial Agents and Private Inquiry Agents Act with the existing obligations under the ASIC debt collection guidelines and under the National Consumer Credit Protection Act. But in terms of other debt collectors you need to very widely consult about what the impact is on debt collectors who are not already part of that system and whether they should be part of one of the external dispute resolutions systems and who would be an effective regulator of the system as well.

Mr ROBERT FUROLO: Do your clients feel more intimidated and threatened by contact by phone, mobile, SMS than by face-to-face contact or is there a distinction in their mind?

Ms MORLEY: I would say it is less the type of contact than the amount of contact and what happens in the contact that is the problem. I think looking at our clients very often they have got so many problems on their plate at that time. We had one client recently who had a number of suicide attempts related to his debts. A person in that situation often will not open their mail and will probably only take phone calls from someone they know. Of course, then there are clients who cannot maintain their telephone connection anyway. So I think that one of the difficulties in this situation, and it is difficult for us to keep in contact with our clients as much as it is difficult for debt collectors, but any form of communication needs to be done reasonably sensitively to take into account those kinds of issues. But it is the quantity and the intimidation that happens with repeated calls at all times of the day from a different person from a different call centre, et cetera, that one person who has called you does not know what you discussed with the person you spoke to before. You write letters, they are never responded to et cetera.

Ms HITTER: As I understand it the ACCC and ASIC do have debt collection guidelines or debtor harassment guidelines which are a very good start because they do point to those areas where debt collectors

have perhaps stepped over the line in terms of the way they approach debtors. As my colleague said, calling people late at night multiple times, and the tone and the way in which they seek to recover the debt, can be extremely intimidating for people who do not really understand the process that they are in. I am not quite sure where those guidelines are up to now. My colleagues may be able to tell me.

Ms LIN: I am not sure of the most recent updates.

Ms HITTER: But certainly there are guidelines that are available and we try to hold debt collectors to account.

Mr ROBERT FUROLO: I noted in your submission that a lot of your clients have a multitude of factors at play with their debt, for example, social, health and other financial issues. At what point is it appropriate to introduce some sort of financial counselling as part of the debt collection process? Could it be a requirement of a judgement debtor position or at some other stage in the debt collection process? Is there a role for saying to people that work needs to be done on their financial circumstances?

Ms HITTER: Absolutely. We are always referring people to financial counselling. It is one of the first things that we do and we also work very closely with financial counsellors—all our organisations do—in resolving the issues of people because we see their legal issues very much related to those other issues with which financial counselling can greatly assist.

Ms MORLEY: I am not sure if I understood you correctly if you are talking about a financial counsellor being within the creditor's organisation or the financial counsellor being an external financial counsellor. I think if it is the latter I would strongly support that. If it is an internal counsellor I think there are things that our clients would not necessarily want to talk about, the sexual assault they have experienced or something like that, with their creditor.

Mr ROBERT FUROLO: I understand. I was trying to suggest that maybe the debt collecting agency might have to consider the provision of, or access to, financial counselling for the judgement debtor.

Ms MORLEY: I think it would be a great advantage if debt collectors earlier provided someone with a local contact detail for their financial counsellor within the area and assist in linking people up with their financial counselling services. The only issue there might be is: Are there enough financial counsellors on the ground to deal with things in a timely manner?

Mr ROBERT FUROLO: Is it the experience of your organisations that if a person is likely to have one financial judgement issue they are likely to have a second?

Ms MORLEY: Absolutely.

Mr ROBERT FUROLO: It would make sense to front-end the financial counselling as a requirement in that circumstance?

Ms MORLEY: It certainly would. There is often a range of matters because there will be fines as well. We had one person recently where we were able to address the fines issues. He is now doing a work and development order. He is out and socially engaged in ways he would not have been. We managed to deal with a pay-day loan that he should never have been in—even the pay-day lender knew that and the moment they knew we were involved they wrote off the loan. We have got him back on track. He is now back to being a more useful member of the community. I think getting people out to someone who can provide assistance in sorting out their matters—we had one client who, in fact, was employed and did maintain employment through a lot of the period of the loan but he had had a major crisis in their life where we helped them negotiate. Now they are back on track. They are paying their debts and they have kept their employment. I think those are really useful things for everyone involved—creditors, the person and the justice system, everyone won from that. I think you are right in getting people out to financial counsellors—excellent suggestion.

Ms LIN: I agree with that as well and I think that should occur as early in the process as possible. A lot of our referrals to our credit and debt hotline are actually from creditors, from the major banks, from utility providers because they recognise that the earlier a person gets assistance in working out what they afford the more likely they are to manage all their debt and also to keep to the repayment arrangement that they are trying to negotiate as well.

Mr ROBERT FUROLO: I was interested to read about the work and development orders which seem to be a very sensible way to deal with people who have, in particular, incurred fines within government agencies, traffic and the like. Is there an application for work and development orders outside that environment, for example, for private debt which is more complicated?

Ms HITTER: It is more complicated. Certainly the work and development order scheme has worked fantastically well in relation to fines debt. People are now involved in a whole lot of activities that they would not have been involved and at the same time they are paying off fines that would never have been paid and the Government was spending money hand over fist to try to enforce those fines and getting nowhere. In terms of a broader application it is a very complex question. I would be happy to take that one on notice. Our main message really to this inquiry was that that program is incredibly effective and it is effective because it has got the non-financial support of community agencies and government agencies that are prepared to offer those activities for people in order for them to work off their fines. Whether you would get the same level of commitment from those organisations to private debts is another issue altogether.

Mr JONATHAN O'DEA: I agree that the work and development order program is a good program for a government department, particularly a government department where the debt that is incurred is a result of voluntary behaviour in the sense that you have to take responsibility for driving your own car. It is probably less expected or planned than some debts that people will voluntarily incur. So for those two reasons I personally draw a distinction between a private sector creditor—anyway, that may be a matter for deliberation. But I agree with the essence of your comment there. I also agree with the essence of your comment in relation to garnishees. I know section 122 protects the wage but does not protect the bank account, and I think that is something we need to look at. I invite comment in terms of garnishee orders, how you think there might be gaps that need to be plugged—and I agree with that gap in terms of a bank account. You should not leave nothing in a bank account in the same way that you should not take everyone's wages. I understand that point. I invite a comment in that regard. Then I just want to ask two other questions.

Mr DWYER: I guess currently there is that distinction between a garnishee against wages, which is protected under the civil procedure that there is an indexed net weekly amount that must be protected from garnishee. What we often see is people whose sole source of income is Centrelink. The Centrelink is paid into their bank account and the bank account is then prone to be garnisheed, either by a private creditor or the State Debt Recovery Office. The way I understand that the protection for Centrelink income is calculated is that up until the time it is paid into a bank account it is protected under section 60 of the Social Security Administration Act, that it is inalienable and cannot be garnisheed. The moment it hits someone's bank account it is then characterised as regular funds; at that point it can be garnisheed by creditors or the State Debt Recovery Office but for this saved amount which is calculated in accordance with a formula, which is outlined in section 62 of the same Act.

That formula does not really properly account for a fortnightly payment cycle of Centrelink income. At the moment it provides that four weeks from the date of the garnishee order the total amount of Centrelink income minus the total amount of spendings during that period is then protected as a saved amount. As I said, that does not really account for when the fortnightly Centrelink payment begins. Quite often we see clients who present with their bank statement, they might have been paid 10 days ago and their whole bank account is essentially cleaned out and they are left with a lengthy period of time in which they have nothing to live on. The protection is not properly calculated in accordance with the principle which I think the legislation enshrines.

Ms MORLEY: If I have understood your question, what you are looking at is what should be left in the bank account—

Mr JONATHAN O'DEA: Yes, and there is also a submission from the NSW Ombudsman which suggests that bank accounts generally do not have any protection. There may be some connected to a social security payment where it has gone in via social security but generally in garnishing wages you have to leave 447 or something dollars. If you are attacking a bank account you can wipe out the whole account. That is my understanding.

Ms MORLEY: And I think both Legal Aid and my colleague on my left, who has just changed the name of their centre and I can never remember the new name, have addressed that in their submissions. I might turn to them.

Mr JONATHAN O'DEA: And I suppose my question was, I was sympathetic to that situation and I was inviting comment on that, but are there any other related gaps as you would see them to be highlighted.

Ms LIN: One of the key gaps would be how the minimum amount is determined, whether that is wage garnishees or bank garnishees. We are advocating in favour of a discretionary system where a court can look at the person's overall circumstances, the number of dependents and other liabilities, before determining what is the appropriate amount to be taken. So in terms of the process at the moment creditors tend to take the full amount, save for the $440 or so per week. If a person wants to object to that they can put in an application to the court to pay off a debt by instalments. But the problem with the process happening in that order is that if a court decides that the person cannot afford to have the garnishee amount reduced to a smaller amount the result is that the garnishee continues at the higher amount above what the court has determined the person can afford anyway. So it sort of gives creditors a perverse incentive to be first in court, to get in first, and that way to have the greatest rights to try to garnishee the wages and get first priority.

Mr JONATHAN O'DEA: I have two other questions. One relates to Ms Lin's strong opposition, as I think you expressed it, to any outsourcing of the functions of the Sheriff's department. I just want to understand the rationale for that strong opposition and whether or not that is shared across the panel.

Ms LIN: Firstly, the role that the sheriff is exercising is one where they go into a person's home to look inside the home to see if there are any items that can be sold off. So that is very intimidating for consumers but the sheriff as an officer of the court has professional obligations to act appropriately. Also, there is no other kind of incentive that a commercial debt collector would have to make sure that they have to provide a return. They are more objective; they are independent in that sense. We believe that that provides better protection for consumers. That kind of enforcement action is the role of the court, so we see it as appropriate that an officer of the court being a sheriff is the one to exercise that function. We also have concerns about the culture generally of debt collectors because there is that commercial incentive to get as big a return as possible. So we have concerns about how appropriately they will act and also in terms of actually monitoring whether or not the appropriate standards are being met, because if you are talking about a person inside a consumer's home, how can you monitor that what is happening in that context is appropriate?

Ms MORLEY: In addition to that one might say as well that a commercial collection agent is going to have other clients. Are they going to abide by strict policies of confidentiality about what information they might acquire when they are so intimately involved in the debt collection process as to enter someone's home and look around and see what is there, and what gets fed back to other creditors as well? While there may be at some level some space for the private agents to be involved, I think that when it comes to writs of execution it is something that should be left to a government regulatory agent rather than farmed out to the private sector.

Ms HITTER: The additional point I would make is that—and I certainly support the points that have been made on this topic—as a government agent we have also worked with the Sheriff's office in terms of assisting them to let people know where they can get assistance if they are facing a writ of execution, and they have been very forthcoming on the whole in assisting us to get those messages across to people in that situation. In fact, I think we have a DVD that we developed where a sheriff appeared on it for that very reason. So as another government service they have been very happy to assist us in that regard. I am not sure whether a private organisation would want to assist us in the same way.

Mr JONATHAN O'DEA: The last area I wanted to explore a bit more was the privacy issue. Previous witnesses have consistently highlighted the problem, as they perceive it, not unreasonably, that the privacy laws prevent identification of people. There are different types of debtors: some who are just criminally motivated and deliberately try to defraud a creditor—I do not think anyone is terribly interested in protecting them—those people who sometimes just do not want to pay or will not pay unless they are put under a bit of pressure; then there are those people who are in trouble and no matter what their intention they just cannot pay. Obviously we are focussing, in terms of your testimony, more on that third category, mindful of the need to have that appropriate balance between rights and interests of creditors and debtors, as you rightly acknowledge in your submission.

I ask the question to myself but also to you: Where is the right balance in terms of privacy protection? I am mindful that in that third category of truly vulnerable people we have also heard that if people cannot be located and that conversation (whether it is a negotiation or a better understanding or agreement being developed) cannot occur at an earlier stage, debts can escalate and the problem can become bigger. Mindful of

that, and those other groups of debtors, do you think it is unreasonable to say that the privacy law currently provides too much restriction in terms of identifying where debtors might be located?

CHAIR: I suppose, in short: Are privacy rules making it hard to find debtors?

Ms HITTER: I am sure that is a better—

Mr JONATHAN O'DEA: I was trying to phrase the question in a sensitive and full way, but that is the guts of what I am asking.

Ms HITTER: I suppose our constituency is essentially, as you say, those debtors who are having issues so from their point of view I think privacy legislation is important in terms of protecting their privacy. I am sure that the other side of the coin would say something different in terms of needing to locate people who are difficult to find. I am not sure that I am in the best position to make a comment on that.

Mr JONATHAN O'DEA: I am also suggesting that it may ultimately be in their interests that that conversation takes place early.

Ms MORLEY: I think one of the fears of allowing a lapse in private protection is the misuse of that information and whether it is accessed for the wrong reasons, to find someone in domestic violence, et cetera. Those protections are in place for a number of reasons, not just to frustrate debt collectors. I think we have to take into account that we would not want to see protections weakened, certainly not for our client base. We have our own levels of frustration trying to deal with debt collectors or credit providers who are very keen to sell you things. Privacy is not an issue then, but it is when you try to challenge them about whether or not it is a proper loan. Then you go through the hoops trying to get all the authorities and things. I think our position would be that privacy should be protected. I appreciate what you are saying that there might be some of those vulnerable clients where if they could be located early and got to financial counselling properly, then that would be a good thing. But, in weighing those balances, I think we need to protect the privacy.

Ms LIN: I think in terms of the information being sought, with some of the submissions that the creditors or the debt collectors' representatives have made, it seems to me that what they are seeking access to would be things like electoral rolls and records from Roads and Maritime Services, which the SDRO has access to for the purposes of their enforcement action for fines and penalties. With the SDRO, they need to be distinguished on the bases that it is not a civil action whereas when you are talking private debt collectors they are pursuing a civil course of action rather than a breach of the laws. I think the Government needs to think very carefully about what kind of privacy protections are in place for records like those where your ordinary consumer would not necessarily be aware that once they have provided that information it could be used for those purposes, and particularly where there are already existing court systems in place where the court can make orders for preliminary discovery before court proceedings start.

Ms MORLEY: Certainly, going back to our domestic violence clients, it is the constant concern that their ex-partner has a connection in Telstra who will leak their information, et cetera. As I said, those privacy protections are in place for a lot of reasons.

Mr JONATHAN O'DEA: I just want to test this proposition. I might be a little bit more long-winded than I need to be in normal circumstances, but a scenario that was put to us earlier today was that in matters before a court or a tribunal there ought be a mechanism whereby, either through discovery or through authorisation of a private agent who is licensed in a particular way, there be release of certain information for the purposes of the court or tribunal matter in a controlled way with even a tracking mechanism, potentially, to provide some greater protection. That seemed to me not an unreasonable suggestion but I just want to test that with you.

Ms MORLEY: I am sorry to come back to this, and I hope my colleagues will jump on me if I am saying the wrong thing here, again, looking at our domestic violence practice—we run the Sydney Women's Domestic Violence Court Assistance Scheme across Balmain, Waverley, Newtown and Downing Centre Local Courts—it is not beyond a perpetrator of a domestic violence matter to commence litigation in a civil case deliberately to get access to that kind of data and to use the court process for recovery. Again, these are extreme cases but they are real. I would be reluctant to go down that path of allowing that kind of tracking and access.

Mr DWYER: I think in launching or responding to a small claims proceeding there is already quite a lot of information to provide families—an address for service, a mobile phone number. Ordinarily, all you need to do is to negotiate on a purely commercial basis. That should be adequate.

Mr STEPHEN BROMHEAD: Let us take it back a step before that. Let us say a creditor does not have the person's name and address or has the name but does not have the address. What has been put to us is that they should be allowed access to RMS records to be able to find out the name and address or to the electoral roll to be able to find out the address. That is what we are talking about. What do you say?

Mr DWYER: In the position where we are assisting clients to recover debts on their own behalf they often experience that frustration that someone has absconded, they do not know how to track them down and the chances of them recovering the debt are pretty low. But on the flipside I suppose we need to balance that right to privacy with the creditor's right to do this sort of skip tracing.

Ms MORLEY: Once you have got a system in place it is a system that has to please everyone and I think that the risks are quite significant in allowing that information to fall into private litigants' hands.

Ms HITTER: We would be happy if you would like us to provide some written submissions on that.

Ms MORLEY: We would too.

Mr JONATHAN O'DEA: I think so. It is a question of balance and you are never going to have a system that suits all circumstances or all people in every situation—it does not exist—but it is a question of finding a balance and that is why I am just trying to test the proposition.

Mr ROBERT FUROLO: In some of the submissions that have been made it has been highlighted that with bank garnishee orders the sheriff may seize and sell goods that a judgement debtor owns jointly with somebody else but that bank accounts in joint names cannot have a garnishee order against them. Is that a reasonable protection or is that an inconsistency in the way the laws are applied? Is that clear what I have said?

Ms HITTER: It is clear but I do not have a view.

Ms MORLEY: We would be happy to respond to that in writing if you would like.

Mr ROBERT FUROLO: Yes. It is just a comment that has been made in some of the submissions and I just thought it was worth getting your insight.

Ms MORLEY: I would point out that, going back to the submissions, more property is protected under bankruptcy than it is under writs of execution, and things that you might think of as essential for a family—like a washer and dryer—are not protected and families can be left severely disadvantaged for a very little return. These are things that are seized and barely cover the cost of the sheriff going along and producing anything. They are just a form of punishment; they are almost a penalty rather than an actual, genuine debt recovery. Our clients quite often would happily go bankrupt at that point to protect their goods, except they cannot even afford these days to pay the cost of going bankrupt because there is a fee for bankruptcy. We would urge you to look at the submissions and take those matters into account.

Mr ROBERT FUROLO: There was some reference to a list of essential household property that is protected and your suggestion that that should be increased. Where is this list held and who manages it?

Ms LIN: It is in the Bankruptcy Act. There is a specific list of items where the trustee cannot touch those; they are protected from being able to be sold to pay off creditor debts.

Mr ROBERT FUROLO: That is called a bankruptcy action but not necessarily judgement debtors.

Ms MORLEY: No, judgement debtors have a lower level of protection from that writ of execution.

Ms HITTER: What we are saying is that the two should be the same.

CHAIR: Do you have any views on the current effectiveness of the sheriffs in executing writs?

Ms MORLEY: From either side we have found them to be diligent in their duties and fair. They are pretty good on the whole.

Ms LIN: I do not recall any substantiated complaint against any conduct by the Sheriff's office and we strongly support the way they give people notice about proposed seizures to give them time to get advice and financial help—just to organise their affairs generally.

Ms MORLEY: The reality is that often there is not much property of any real value there to be seized.

CHAIR: The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

WITNESSES: Yes.

CHAIR: The Committee has resolved that answers to questions taken on notice during your evidence and any additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. That concludes our questioning of you today. I am very pleased that you had the time to attend. I thank you for appearing before our Committee today.

(The witnesses withdrew)

ELIZABETH COOMBS, NSW Privacy Commissioner, Information and Privacy Commission NSW, sworn and examined:

CHAIR: Could you please advise the Committee in what capacity you are appearing today?

Dr COOMBS: I am appearing as the NSW Privacy Commissioner appointed under the Privacy and Personal Protection Act 1998. It is an independent statutory officer role and it reports to Parliament. It is a five-year appointment and is oversighted by the parliamentary committee on the Police Integrity Commission and the NSW Ombudsman.

CHAIR: I draw your attention to the fact that your evidence today is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in action in relation to the information you provide. I also note that any deliberate misleading of the Committee may constitute a contempt of the Parliament and is an offence under the Parliamentary Evidence Act 1901. Before we commence with questions would you like to make a brief opening statement to the Committee?

Dr COOMBS: I thought that I might do that because there can be some misunderstandings that exist about my role and also that of privacy legislation. I will be brief though. I have already covered the fact that this is an independent statutory officer role. My functions are to promote the protection of personal information and privacy to assist New South Wales public sector agencies—and these are not just State government agencies but also local councils as well as universities—and to help them adopt and maintain the provisions of the New South Wales privacy legislation to investigate complaints, undertake research on privacy-related matters and to give advice.

The powers of the Privacy Commissioner include the ability to require the provision of documents, information, and also information on personal information held by an agency, as well as to undertake inquiries or investigations with both the protections and powers provided under the Royal Commissions Act 1923. The position is inside the Information and Privacy Commission NSW [IPC]. There are two commissioners inside the IPC—the Information Commissioner and the Privacy Commissioner. We are both equal but independent of each other's roles. Essentially, that reflects the issues that many agencies face: on one hand to provide access to government information; on the other hand to protect the personal information of individuals, New South Wales citizens.

In some ways it is a reflection of some of the fundamental elements of a modern democracy, that is, to hold that people's personal information is private and have adequate considerations around that but also to be able to query and to hold government accountable by accessing government information. The legislation, whether it is the general legislation, which is, as I first mentioned, the Privacy and Personal Information Protection Act, or the Health Records and Information Privacy Act 2002, are both based on principles.That is one of the areas which I think is useful because it covers such things as the collection of personal information, its use, the way that it is held, disclosure, amongst other things.

When I am considering matters that come before me—and they are very diverse; they are not just complaints that come in from members of the community but they are also asking for advice whether a draft bill is going to Parliament, whether it is a Cabinet minute or an agency is thinking of some service initiative—not only do I take into account the legislation and what it shows us, but also the expectations of the community, and there I rely not just upon our complaints data but also research undertaken. The most recent piece of research which I mentioned in my original submission to the inquiry was that undertaken in October 2013 by the Federal Privacy Commissioner, and that was a very robust piece of research.

The last point I would like to make is that the points in the various submissions to the inquiry are well made and from the outset I acknowledge the legal responsibility of debtors to pay debts they legitimately owe. Various submissions, as well as some of the people who have been heard here prior to myself, make clear, though, the realities which are experienced by debtors, those mistakenly thought to be debtors as well as those of the collectors. I note that those matters have also been documented in a report by ASIC and the ACCC in 2009 in their report on debt collection practices in Australia.

CHAIR: What do you see are some of the main privacy issues in relation to debt recovery in this State?

Dr COOMBS: As I read the submissions—I will be relating largely to those—it comes down to the location of debtors, and that is where it is felt that a government agency which holds information which may assist in the identification of the location of a debtor could be accessed by private commercial collection agencies. That is an interesting point. Those private collection bodies would not be covered by New South Wales privacy legislation but the public sector bodies that hold that personal information will be. The Federal privacy legislation applies to businesses over the size of $3 million turnover per annum, so quite a number of them would be caught there.

In terms of New South Wales privacy legislation, one of the principles is very much concerned—and this is section 17 of the Privacy and Personal Information Protection Act—that information should be used for the collection for which it was provided. That is a provision. There is also community expectation that when they provide information for a particular purpose, that it will not be used for a purpose other than for which it was provided. I think it is something like 95 per cent of Australians think that it would be a misuse of their personal information if information that they gave for one purpose, was used for another. That is from the research report of October 2013 that I mentioned earlier.

Mr JONATHAN O'DEA: I think the community expectation is that people pay their dues and do not escape by absconding or not being located. I would draw the observation that over recent years there has been more of a move towards protection of privacy, and some of that has been very appropriate and welcomed by the community. I think the community would see criminal debtors at one extreme and then a lot of people through to those who may have had to move house for unexpected reasons and cannot be located, but the issue of location of debtors is one that the community has to pay for in taxes, higher prices and other costs to society because people do not pay their debts. I also point to the electoral roll, which in recent years seems to have moved off limits to everyone as well. What is the solution if you do not bring back the pendulum a little bit towards what I would see as a reasonable community expectation that people be held accountable?

Dr COOMBS: You have raised quite a number of issues there, so would you bear with me as I address them all?

Mr JONATHAN O'DEA: Yes, and thank you for bearing with me.

Dr COOMBS: Firstly, I think the issue of where the pendulum was or the perception that it is way over there in the privacy sphere would be something that many people would challenge quite severely. For example, people were able to access personal information, and it has only been in recent years that we are now looking to the purpose for which information was collected, which has been a requirement not just at the State level but also at the Commonwealth level. It would only be agencies actually complying with legislative requirements. So if they were getting access to information earlier you would have to query the basis on which that was being collected. Obviously, as was raised in questions earlier, there is an issue of the balance here, and it is not one that is going to be easily struck, but it is very important that we consider and consult with the community about where that balance should be.

I was not aware, until I was preparing for this inquiry over the weekend when I read the debt collection practices report, of some of the issues which arise about the provision of information. Creditors passing that information on to collection agencies but not providing correct information, which has led to practices where people who do not own the debt are contacted about it. In some cases—I am not saying all cases— there are untoward practices exerted, and you do get people who are in very difficult situations. That could have been avoided if some of the initial steps were followed, such as ensuring that when you give credit to someone you have gone through a proper process to ensure that they are able to participate in that transaction, that you also look at getting the details about them, that you record accurately and, if you do provide it onwards, to do that in a way which is clear and accurate, and when collection people go to contact people and seek to recover the moneys owed they do it in a way that is generally recognised to be appropriate. I am referring to the guidelines which have been put out I think by ASIC about the best way to conduct oneself if you are collecting debts—the Debt Collection Guideline for Collectors and Creditors.

It is a very difficult situation and, as I said at the outset, where debts are legitimately owed I certainly do not see that people should hide behind privacy provisions to prevent them being paid. But as Privacy Commissioner I have to point out that compliance with the legislation is obviously one of the key focuses that I have when I am advising and speaking with agencies. I do not think it would be appropriate for them to provide information to such bodies which then places them at odds with their requirements underneath the New South Wales privacy legislation.

Mr JONATHAN O'DEA: I understand that, and we represent the community I suppose and we can recommend that the law be changed. I am not suggesting that people do not comply with the law. I want to put a scenario to you because it is something that was put to us earlier and something that to me had some appeal. Where a matter comes before a court or tribunal maybe in pre-discovery or in some capacity where there is a clear purpose for pursuing a debt, the court ought be able to authorise in a controlled way and potentially tracing the authorisation where that information goes, the release of information so that somebody's location can be identified. That seems to me a reasonable proposition and I invite your comment on that.

Dr COOMBS: We had a situation in I think 2012 where there was a court decision concerning Australian National Car Parks and Roads and Maritime Services [RMS] that RMS should provide information. We had such an incredible response from the community. We are a small agency. I was also on the phones to try to assist people because we were just inundated with requests. A lot of the concerns were "It is actually not me, and I pointed out to these people over a period of time that I was not in that location at the time", and I think the issue I am picking up from previous speakers is that it may seem on the surface to be a very legitimate way, but there are some further complexities which need to be more carefully thought through. I certainly acknowledge the role of the courts, and obviously you do need to have processes to legitimately identify debtor and where they are located. But I do think we also need to acknowledge that there can be circumstances where such matters are brought for other purposes, or they may lead to unintended consequences, so I seek a balance in that. I do not have a solution for you though, as you asked.

Ms SONIA HORNERY: In terms of the nuts and bolts of legislation that we have, in your role what do you see are the gaps that we can look out for and improve?

Dr COOMBS: I would certainly like to be helpful in that way. The Privacy and Personal Information Protection [PPIP] Act provides ways for the application of the principles to be modified in operation, and possibly we could think of that too. Going back to a matter that you raised earlier, that if it might actually help the debtor if that information was provided. One of the most important things to consider is the actual issue of consent. Yes, there will be those who may wish to avoid paying a debt incurred, for which they do owe money. But if you say to people, "You are giving us this information for this purpose, but we also want your consent that it may be used for other purposes". The consent is a very powerful tool, if you like, when you are seeking to engage the person to manage the privacy implications. Because then they have given consent and if you are clear as to what you intend, on how you are going to use it, it may be one mechanism that could play a useful role when you are dealing with a certain group in the community, that is people who are seeking help in managing their financial arrangements perhaps.

I will just go back and say I do not think there is one panacea for all of this. Underneath the PPIP Act there is what we call public interest directions. That is section 41 of the Act whereby the Privacy Commissioner can develop a public interest direction which weighs up the public interest and can modify the application of an information protection principle and we do have a number of those. There is one, for example, that enables the Department of Police and Justice to provide personal information to credit reporting agencies so that information can be provided and therefore is not a breach of the PPIP Act. There are also codes of practice which can be developed, and that is another tool. In some cases the Privacy Commissioner has the role to make the section 41 public interest direction after consultation, and most certainly with the Attorney General, and in the case of codes of practice the Attorney General would make that after consultation with the Privacy Commissioner.

Underneath some agencies' own legislation there are privacy provisions, so when we think of privacy protections it is important to realise it is not just the privacy Acts that I have mentioned but also the empowering legislation of agencies concerned, for example, the Road Transport Act. The RMS has certain provisions which are additional to the Privacy Act which they have to consider. Some of the other agencies I think are Family and Community Services or DOCS.

Mr ROBERT FUROLO: What do you think is the principle of courts disclosing information about judgements to credit reference agencies for a fee? It was identified in submissions that the courts provide information to credit reference agencies for a fee. This is private information. What do you think the principle there at play is? Is that a community interest?

Dr COOMBS: I would like to ask that I think about that further because I think there are a number of issues of concern there and when you say for a fee, I am interested to know quite how that arrangement works and where the powers for that come from.

Mr ROBERT FUROLO: I am quoting from a submission that was made.

Dr COOMBS: I do not doubt that. I would have to say that I have concerns about it, but my ability to articulate them at this stage—I would like to do that with a bit more thought behind it.

Mr ROBERT FUROLO: Yes.

Dr COOMBS: One of the things that I have neglected to mention to you is that under the PPIP Act there is a requirement that the disclosure principles, "Do not disclose if it is for a purpose other than which it was collected", can be modified if public revenue is being protected. So in terms of the public sector there is that modification of the information principle about only using information for the purpose for which it was collected.

Mr STEPHEN BROMHEAD: What Mr Furolo was talking about was where an application is made for a copy of the judgement, which is a public document, so the court receives an application, and there is a fee attached, and it will supply a copy of the order.

Dr COOMBS: The definition of "personal information" in the New South Wales legislation is that it is not ‘personal information’ for a number of things, and one of those is if it is information in a publicly available document, so it is already publicly available. That may be one of the issues that need to be considered in this, and I need to get a better handle on what is being proposed.

Mr ROBERT FUROLO: Many submissions talk about importance and much of this morning's evidence was about the barrier to solving the debt collection challenge, being access to private information. Many submissions state that that information should be available to debt collection and commercial agents. If we accept the justice issue in providing people access to the information to help them settle their debts, would a solution, or partial solution, be that instead of giving the information to the private operator make it available to the Sheriff or the courts for the serving of notices or orders? Therefore, the information about someone's address is not made available to the private collection agency or the debt collector, but is made available to the Sheriff to execute the order?

Dr COOMBS: I need to just go back to the principles of the privacy legislation. If it was for a purpose other than for which it is collected, I would most certainly have concerns about that. If you or myself are providing information for a driver's licence, but then that is subsequently provided elsewhere for a purpose of checking to see whether I have a debt, I think that is not an appropriate use of the personal information that was provided.

Mr JONATHAN O'DEA: A recommendation from Marrickville Legal Centre talked about introducing a low-cost procedure in the Local Court and the New South Wales Civil and Administrative Tribunal for preliminary identity discovery to replace the Uniform Civil Procedure Rule 5.2. Have I lost you yet?

Dr COOMBS: No.

Mr JONATHAN O'DEA: That allows for a simple, low-cost method to identify and locate debtors in small claims matters. Can you comment on that recommendation or would you rather take that on notice? It is in similar vein to other discussions in trying to find a solution.

Dr COOMBS: Yes. I think there is no doubt that a lot of the submissions to the inquiry have raised the issue of the time and cost of actually pursuing debts. Obviously, that is a significant issue, which is passed on, as you said earlier, to consumers and the general community. This particular issue raised by Marrickville Legal Centre I would like to take on notice, but I do keep coming back to the point of the provisions of the legislation, and that is that if it has been provided for one purpose, unless consent has been given, it should not be, and actually is not to be, used for another purpose underneath the Act.

Mr JONATHAN O'DEA: Unless there is a change to legislation?

Dr COOMBS: I am speaking as legislation currently is.

CHAIR: Thank you for your attendance today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Dr COOMBS: Of course.

CHAIR: The Committee has resolved that answers to questions taken on notice and additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. Do you understand that?

Dr COOMBS: Yes.

CHAIR: That concludes our questioning today. Thank you for appearing before our Committee.

Dr COOMBS: Thank you.

(The witness withdrew)

(Luncheon adjournment)

TRACEY HALL, Sheriff, Office of the Sheriff of New South Wales,

DAVID DODDS, Assistant Sheriff Regional Manager South, Office of the Sheriff of New South Wales, sworn and examined:

CHAIR: I welcome Ms Tracey Hall and Mr David Dodds to this inquiry into debt recovery in New South Wales. Thank you for appearing before the Committee today. I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in action in relation to the information you provide. I note also that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. Before we commence any questions, do you have a short written statement you would like to read?

Ms HALL: No, I do not, I am sorry.

CHAIR: I apologise for the delay due to technical problems. We will just take a short adjournment.

(Short adjournment)

CHAIR: Thank you for your patience while we dealt with some technical difficulties. Would you like to make a short opening statement before we proceed to questions?

Ms HALL: No, Mr Chairman.

Mr DODDS: Not at all.

CHAIR: Can you outline what steps in the debt recovery process are currently undertaken by the Sheriff's office?

Ms HALL: Technical and operational? I might just pass that to Mr Dodds.

Mr DODDS: Presently we execute writs for the court, which are writs for levy of property.

CHAIR: You will have to speak up as this is a very acoustically challenged room.

Mr DODDS: Okay. We are the sole execution agency for the State in the execution of judgements, namely, writs for levy of property, which are judgements for moneys. We undertake those for the Local Court, District Court and Supreme Court.

CHAIR: I take it that the Sheriff's office has a number of other functions in addition to the execution of writs?

Ms HALL: Yes, in relation to enforcement or other areas of work?

CHAIR: Just other areas of work?

Ms HALL: Other areas of work, yes. The Sheriff's office is responsible for court security, jury management and enforcement functions.

CHAIR: The Committee has received numerous submissions that have all indicated significant delays in the carrying out of enforcement options in relation to debt recovery. Can you provide any comment on the current time frames for different types of enforcement options?

Ms HALL: It would depend on the centre because there are 55 locations across New South Wales that the Sheriff's office works out of, so it would depend on the location. The timing would be different at every single place, depending on the amount of work that they have at that location. However, if you look at the city central business district [CBD], which is one of our biggest areas, there is a significant delay and we prioritise the work in relation to the nature of the matter, the debt, so it would depend on the number of matters that are pending, whether they are property seizure orders or writs for levy of property, whether they are evictions. All of those things have different priorities. Evictions get a certain time frame and Mr Dodds might be able to talk about the time frame, but there are evictions that we have to schedule and carry out. Seizures of property are listed on certain day to go out and seize and remove the property. A number of different functions have different priorities.

CHAIR: Can you give us on an annual basis the number of judgement writs you have to execute that are currently outstanding and the number of evictions? Do you have those figures?

Mr DODDS: Some 35,000 writs for levy of property and about 4,200 on average per year for tenanted properties and mortgagee in possession.

CHAIR: What is the average time frame for the execution of those writs?

Mr DODDS: For mortgagee in possession the legislation requires that we give 30 days notice. We add on an additional five days to allow service by post for a Consumer, Trader and Tenancy Tribunal [CTTT] or a Residential Tenancies Tribunal warrant against a tenant, they can be executed effectively immediately. They have a lifespan of 28 days. We generally execute them within four or five days without notice to the occupants.

CHAIR: How long generally do writs of judgement take to be executed?

Mr DODDS: We have a turnaround of a month to two months. Generally with a seizure, there is a contact within the first seven days and within seven to 20 days after that we will make a physical call. After that, once the goods are seized we will return effectively a month later, allowing the debtor to take any steps they require to have a matter stayed.

Ms HALL: Or to satisfy the debt.

Mr DODDS: Or to satisfy the debt, so the cycle could be a month to two months before we return to physically remove the goods and put them to sale.

CHAIR: If this Committee were to put some written questions to you in relation to those statistics, would you be able to provide those?

Ms HALL: Yes.

Mr DODDS: Definitely.

Mr JONATHAN O'DEA: On that same line of questioning, we heard earlier today—and I do not know what is correct—that there are delays in some parts of up to seven months or so in terms of writs of execution and going out to properties because there are issues around either resourcing, competing demands on time, court sitting and the like. Do you have any comment on that because one to two months versus the seven or eight months that we heard from a previous witness is quite a disparity?

Ms HALL: Yes. Look, one to two months is the general rule. A lifespan of a writ is 12 months. Obviously you try to execute it before that time period before it expires. Satisfaction of it for a creditor has different levels. We send out a contact letter within the first seven days so that is our first contact. We may attend the premises and there is nobody there. We then re-attend premises on second and third occasions, but I cannot say that it does not happen; yes, it does. On occasions there have been instances where we have had seven months delay in executing the process but that is not the only step in the process that has been followed. But, yes, that is something that has happened, and probably more at the Downing Centre or Sydney East or the City of Sydney.

Mr JONATHAN O'DEA: Do you monitor for each individual? It is a big challenge because there are 35,000 and 4,200—it is a large number—but do you monitor the performance on time for each of those and keep key performance indicators [KPIs]?

Ms HALL: Yes.

Mr JONATHAN O'DEA: Great. And do you benchmark against other jurisdictions?

Ms HALL: It would be great to be able to benchmark and if we had the staff to actually be able to benchmark and make a difference with that, we would. At the moment we prioritise the matters by looking at how old they are, so we have a report that is run of 60 days—

Mr DODDS: There is a 60 day and a 90 day but each set of reports is monthly.

Ms HALL: Yes, so we get monthly reports and we know what we have on hand so if something is getting older, then we have the officers in charge monitor that and their priority is to attend to those ones first.

Mr JONATHAN O'DEA: If you are collecting all that data, which is a great first step, and if another jurisdiction likewise is collecting the data then it would not be that hard to compare your performance levels versus others, would it?

Ms HALL: Yes, that is correct.

Mr JONATHAN O'DEA: I am wondering why none of that seems to occur with any other jurisdiction either within your own management structure or within a broader cooperative approach between different jurisdictions at least in Australia?

Ms HALL: Every jurisdiction in Australia actually deals with it in a different manner. The difficulty and the delays that we face are purely staffing—that is the only issue that determines when we can get to a matter. I would like to be able to say that we could throw resources at it to clear it up but that is just not the case. A few months ago we had significant delays and complaints. I know that it is not the best way to operate with complaints being the activator, but if there is a matter where somebody has made a complaint we try and escalate that. We had a blitz, for want of a better word, in the CBD area a few months ago where we had overtime for staff who went to a lot of locations over the weekend so that there was a better chance of getting people at home during the weekend than during business hours when our sheriffs operate—that is another issue.

Mr JONATHAN O'DEA: Some people might say that the nature of the Sheriff' office demands that we need more resources. Some people equally might say that the structure needs to change a little bit or be a little bit more flexible given changing work patterns and hours of operation. Others might say that the Sheriff's office is not as hardworking or efficient as it needs to be. I do not know what the truth is. But suggestions have been put forward to this Committee that we should look at outsourcing options, as has occurred in Queensland and the United Kingdom. I understand that Western Australia has also used a type of outsourcing to a particular entity for 4½ years in conjunction with the recovery of some government debts as well, which is something the Committee only recently heard about.

In order to answer those questions do you, operating very efficiently with too few resources, need more resources? Do you need to manage the existing resources more efficiently? My third question, which for me is an obvious answer, is: Do you need more flexible work practises to match the changing nature of the way in which society is operating? For all those questions to be answered fully and properly we need more information. I am surprised there is not more of a comparison drawn between some of those different models and relative performances or is there information that someone collects that the Committee is not aware of?

Ms HALL: I can answer all of those questions. In relation to allocation of resources, I would be happy to take any advice from any jurisdiction that can manage the number of processes that we deal with in New South Wales with the staffing number that we have. The Government set priorities back in 2005 in relation to where the Sheriff's activities need to lie: with court security the priority, jury management and then enforcement. When we get to the stage of looking at the competing interests of enforcement or a court security matter, unfortunately, staff are pulled from the field to go and assist in court security matters. To give a bit of background to that, it was following 11 September 2001 when obviously there was a greater awareness or focus on security-related matters. As a result consideration was given to how to secure courts—we had nothing at that stage.

In 2005 there was a rollout of perimeter security in major centres with multi-jurisdictional courts and juries. So they rolled out perimeter security and that meant there had to be more staff looking after security. From that has rolled out the security arrangements across the State and there are varying levels depending upon the jurisdictions sitting there. So the resource allocation has to be put behind the security and, unfortunately, enforcement does play second fiddle. Following that reallocation of resources from enforcement work to security, there was an attempt by the Sheriff's office to try and improve the recovery rates and to affect some efficiencies. It started with trying to get more information at the beginning stage of the debt, which is the best time to do it when it is a fresh debt, and it saved the officers having to go out and execute the process. Unfortunately, those arrangements came under great resistance from the union and it did result in industrial action. That process was ceased.

In 2011 there were some discussions with the Sheriff's office and the mercantile and commercial agents industry about testing the appetite of whether they were prepared to take on enforcement functions. So those inquiries have been made with that industry. There was varied responsiveness to that. Obviously because of the nature of the work they were very interested in taking on the property seizure orders, which is the easy work to do; they were not so happy to take on evictions and the not-so-nice work, and probably the process that was easier to get the best value for money. Unfortunately, some of the work the Sheriff's office does is not the nicest sort of work. Those discussions met with varying degrees of responsiveness. There has been some significant reform in the collection of debts. I am not going to steal any thunder from the Office of State Revenue [OSR] because I know that they will be speaking later. However, the discipline and collection has evolved in relation to state debt—that is, State Debt Recovery officers have made significant steps towards recovering at the early stage.

That has had an impact on the Sheriff's office because we will not be seeing as many property seizure orders for us to actually exercise because they are actually managing that at the front-end and there is not a lot

coming through to us in any event. So there is a significant change in enforcement work State Debt Recovery wise. Then there was the Office of Finance Review in 2012. Those findings were along the lines of whole-of-government debt recovery with a centre of excellence to provide a superior service to the New South Wales public and not to replicate debt enforcement activities. In that space we have a debt enforcement process and so does OSR. That is a real duplication of that work and, as a result, in 2012 we started discussions with OSR. That was in keeping with the Government's principle of priority of security over enforcement. So we had those discussions with OSR and it was for them to take on all of the enforcement work for the Sheriff's office.

The function of executing the specific enforcement functions is quite remarkably complex and logistically demanding. We have been discussing with OSR for quite some time. We have developed a joint business case to go to Treasury to support the transition of enforcement work from the Office of the Sheriff NSW to the Office of State Revenue. We are expecting that business case to go to Treasury by September this year, which will have a whole-of-government approach to debt recovery—not just State Debt Recovery but civil debt recovery as well.

Mr JONATHAN O'DEA: Will that include private debt?

Ms HALL: Yes.

Mr JONATHAN O'DEA: In that context, and mindful of the original question, do you have any concerns or have you heard any particular comments that you want to put on to the record about the success or failure of using private bailiffs in other jurisdictions? Thank you for giving the Committee that model but I am referring to the private bailiff type model, a Queensland, United Kingdom and Western Australia path which is different to an OSR path?

Ms HALL: Yes, as I said, inquiries have been made with the Mercantile and commercial agents which would be the private bailiff and there was varied responsiveness. Yes, I understand that a lot of them would want to take on the work. However, they were very interested in property seizure orders.

Mr JONATHAN O'DEA: I understand that. That is a different question to the experience interstate or overseas with that sort of model. Do you have any specific or empirical or other evidentiary basis on how well it has performed?

Ms HALL: I have not gone into how successful it is because we have been working very closely with OSR on this program and, I suppose, the business case being prepared for that.

Mr JONATHAN O'DEA: That is fine. I just wanted to get your perspective on something that has been put to us by others.

Ms HALL: No, I have not got any comment on that.

Mr ROBERT FUROLO: A number of submissions and evidence that the Committee received earlier today referenced what were termed backlogs and difficulties with the Office of the Sheriff—timeframes, calls not being answered, voice boxes not being accessible, voicemail et cetera. I am curious, in your view are those difficulties a function of simply resources that you have at your disposal? Has the Office of the Sheriff been required to meet the State Government's efficiency dividends in terms of savings every year? Are you the subject of budget cuts in real terms year on year? Have you been asked to make savings in terms of your staffing levels? Are these issues the Office of the Sheriff is dealing with that are contributing to the identified difficulties of debt collection?

Ms HALL: Staffing numbers, yes, that is a difficulty for us. As far as efficiency dividends, yes, that is a requirement of every business centre manager to have the dividends. As far as having to cut my resources to meet budget cuts, no, because I have not got enough staff to cut so, no, that is not happening. In relation to complaints about people not being able to get the voicemail of the Sheriff's office, in particular we have a problem with the system that is down in the Downing Centre which seems to be the biggest area of complaint. When I spoke to the officer in charge there it has some archaic telephone system that has a queue that if you have one phone, one call or something, it blocks it up. I think it takes five calls and then after that that is the end, it is blocked, and you cannot get a message through. So I have asked them to replace it so hopefully the Downing Centre should not have that problem, but that is an archaic telephone system.

Mr ROBERT FUROLO: An issue in relation to the Sheriff's office are the hours of operation of sheriffs. Do you have a view about the ability of your sheriffs to serve notices, execute warrants et cetera on the community?

Ms HALL: That is an award issue. To change the hours of the sheriffs operating would be to address the award. I am happy for that review to take place but we have tried in the past and it has led to a little bit of agitation from the union. However, in circumstances where we have used overtime, we can work to try to accommodate difficult clients that we cannot get to during business hours during the week. Our officers start at and are out on the road at 6.30 in the morning. They generally do enforcement work until about 9.30 a m. and they come back in to the court to do court security. So they do not dedicate their whole day so they are out in the morning, they come and do security when it is busy with people coming through the courts and then when there is downtime in the afternoon they go back out and execute more warrants or execute service. There could be some leeway there, depending on the outcome of the business case and whether that modelling is agreed to, it will be something that we will work through with the Office of State Revenue. We will be transitioning the work from us to them if that goes ahead. We will still be working in that space for a while until it transitions through to it.

Mr ROBERT FUROLO: The Australian Creditors Alliance recommends that police should execute warrants to apprehend judgement debtors under the same rules that apply to apprehend a witness for, say, a motor vehicle accident when they have failed to attend for examination. Does the Sheriff's office have a view on that?

Ms HALL: If it is in relation to bringing a witness before the court to answer on an examination summons?

Mr ROBERT FUROLO: Do sheriffs have that power?

Ms HALL: Yes, we currently do that now but only a warrant of apprehension. We just bring them before the court so that they can answer on an examination summons. If the police would like to take that on I have no problem but I do not think they would.

Ms SONIA HORNERY: I refer to my experience of the court system, as a member of Parliament, in the Hunter area which is that staffing cuts have been made because of budget cuts but at the same time the job has become more dangerous. One of the dilemmas for me is about protecting staff from dangerous situations in relation to a change to the system or budget cuts. If we continue to make budget cuts how do we ensure that staff are also protected? Do they go out and work alone on a case or are they usually accompanied by another person?

Ms HALL: It would depend on the nature of the matter. We do a risk assessment prior to going out and we get information and intelligence from either the police or estate agents or people who have got some involvement in the matter. In some instances, it is assessed and a person will attend on their own or, if they need to, they will have someone go with them. It will depend on the particular matter. The sheriffs also have a valuable get-out clause in our legislation that says that we actually can step away if we are not feeling secure or safe about the environment and come back another day. The police cannot do that but we have got the luxury of being able to do that.

If we have a problem or we have got some intelligence and we think that there is any danger we always call the police and we consult with them and we arrange with them and we go out together and we do the process that way. So it depends on the nature of the matter. In the central business district where there are a number of businesses that we attend just to serve a document on them we walk around the streets in single officers and attend business premises. Having said that, anything could happen at any time but generally it is done with due diligence and risk assessment and that is how we allocate our resources. Mr Dodd has made a very good point—all my officers are tactically trained and have just completed a refresher course of their tactical training and they carry appointments as well.

Mr JONATHAN O'DEA: Putting aside issues of resourcing which I know is an important issue, do you have any other suggestions about how enforcement regulations could be improved to increase the efficiency or effectiveness of those enforcement actions? In other words, what is slowing down the enforcement process and how can it be improved other than by giving you more staff power?

Ms HALL: Other than that?

Mr JONATHAN O'DEA: Which we have heard about.

Ms HALL: Technology for the Sheriff's office if we stayed in that space we would need a new system because we have got a legacy system that is over 20 years' old now and really does not support the needs of the operations. It does not give us any provision to get any valuable data and analysis from the reporting capabilities, there are not any. In fact, it is limping away until we can actually find some other way of operating through that. As I said before, the review of the current award provisions of Sheriff's officers, if we stayed in that space, would be of benefit. When we are executing writs of levy of property and we are refused entry to a premise there is a difficulty because we do have to step away. We then have to get the creditor to go back to court to get a section 135 order for us to return to those premises. That would probably benefit if that was looked at for Sheriff's officers. Working outside business hours would benefit the creditors. I suppose, looking at things like the transition to OSR. I have not looked at other processes or modelling specifically because that appears to be the way that it is heading towards.

Mr JONATHAN O'DEA: In the submission from the Australian Credit Forum it pointed to the current situation whereby there are separate applications and separate fees payable for each successive enforcement option with the Sheriff's office. It suggested that perhaps there might be a suite of enforcement options that are available for the payment of a single fee. Do you want to make any comments on that proposal put forward by the Australian Credit Forum? I suppose it is bundling a number of services under one fee as opposed to having separate fees for each enforcement step?

Ms HALL: I see, to have a bundled enforcement fee and it covers everything?

Mr JONATHAN O'DEA: It covers at least a range of options, if not everything, yes.

Mr ROBERT FUROLO: It is less staff time for you as well.

Ms HALL: I suppose less staff time but it would really depend on each particular matter. Mr Dodds has experience in that area.

Mr JONATHAN O'DEA: Do you have statistics available of a typical case involving many different enforcement actions and whether it is possible to streamline or rationalise that bit-by-bit approach into a more holistic approach?

Mr DODDS: The Hawkless Report nominated three calls for a fee of $170-odd that is fairly expensive and would that be tolerable to creditors? It becomes very expensive to call upon an address and return to an address logistically to remove items, sometimes it would be half a truck full of goods to remove, and then have them transported to auction. There is considerable cost that we have to pass on to a creditor.

Ms HALL: In relation to fees that would probably be something else that would need to be reviewed in the area of enforcement if the Sheriff's office is to stay in that space because I do not think the current fees have been addressed or looked at for—

Mr DODDS: We have not had a fee increase for some years other than CPI.

Ms HALL: Just the CPI. It makes it very cost inefficient for the Sheriff's office. It is not really a fee for service. We just do it and there is a cost to the Government in doing that so a fee structure that would suit the work that we are doing would be something that would need to be looked at.

CHAIR: Does the fee that is paid go back into the Sheriff's budget?

Ms HALL: It depends on which fees we are talking about.

CHAIR: Say a fee for the execution of a judgement writ going out. The creditor says, "Here's some money. I want you to go out and enforce this."

Ms HALL: That one goes into the Sheriff's revenue.

CHAIR: So if a creditor does that, he pays his or her money, you go out to the premise and there is no-one there and you come back. Is that an execution of that fee?

Mr DODDS: They have expended the fee in accordance with the regulations, yes.

CHAIR: And if you are the creditor and you want them to go out again you have to pay another fee?

Mr DODDS: A further fee. From that fee the officers will make certain inquiries with either of the neighbours and try to ascertain if there is a likelihood that the person actually lives there or someone does reside there and get a lead at least and then follow up on that lead.

Ms HALL: So they get some valuable information which actually gets fed back to the creditor so that they can make an informed decision about whether or not they will further pursue it or give it up.

CHAIR: For the benefit of the Committee, say a Sheriff's officer gets the judgement writ and they are going to make inquiries, what would they do with that judgement writ in relation to executing it?

Mr DODDS: In relation to the inquiries with the neighbours?

CHAIR: No. I have a judgement writ on my desk in the Sheriff's office. What do I do with it?

Mr DODDS: First, their instruction is to make inquiries through the yellow and white pages to see if they can ascertain a phone number to make an actual call to the debtor. If they can make an arrangement to then attend the address when the debtor is in attendance they will do so. The idea would be that they call upon the address and make the demand there and then and identify goods to be seized if the debt was unable to be satisfied. Preferably they will try to negotiate with the debtor over the phone to some sort of payment, if they can pay it off, before they make the physical call. In those inquiries they may ascertain that they are working and that may lead to a garnishee. So it is another avenue for the creditor to take.

Mr JONATHAN O'DEA: In that context it has been put to us that there are a range of assets that might be seized that would be protected in a bankruptcy situation, washing machine, dryer, that might only reap a very small return at a public auction—$3, $10—and that it is more of a punishment rather than a real debt recovery exercise. Do you have a view on that?

Mr DODDS: The legislation covers sacrifice and hardship and for the officers to attend and they take an inventory of the goods. Yes, we do that on the first call so it allows then for a third party to make a claim on those goods if need be, and then for an assessment to be made. Is it viable for the creditor to spend any more money to return just to pick up a washing machine, considering the fact that the recovery rate at an auction, when you include auctioneers fees—they make $30 or $40 in it? Effectively you are just depriving the debtor of an asset for no purpose whatsoever. So hence the hardship rule would apply so the sheriff would not follow that one through.

Mr JONATHAN O'DEA: So there is a discretion that is exercised in those sorts of situations?

Ms HALL: Yes.

CHAIR: Has debt recovery moved on beyond the Sheriff's office in modern day?

Ms HALL: Sorry, has it?

CHAIR: Do you think debt recovery has moved beyond the realm of the Sheriff's office?

Ms HALL: If you are looking at a whole-of-government approach and if you are looking at debt enforcement currently with OSR, they have debt partners at the moment that they are working with to recover State debt. It does not make a lot of sense to have two government departments running parallel operations in a debt enforcement area. I think that was probably along the lines of why it is heading towards looking at that model. If it stayed with the Sheriff's office then it would seem a bit redundant to have two businesses or two government departments running the same operations and spending money on operating systems to run parallel enforcement operations.

CHAIR: Thank you for your attendance today. The Committee may wish to send you some additional questions in writing, the replies to which would form part of your evidence and would be made public. Would you be happy to provide a written reply to any further questions?

Ms HALL: Yes.

CHAIR: For your information, the Committee has resolved that answers to questions taken on notice and any additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. Do you understand that?

Ms HALL: Thank you, yes.

CHAIR: That concludes our questioning today. I thank you for your patience in relation to our technical difficulties, of which I feel you may share some of our pain. Thank you for appearing before the Committee today.

(The witnesses withdrew)

CAMERON SMITH, Director, Security Licensing and Enforcement Directorate, NSW Police Force, affirmed and examined:

RODNEY STOWE, Commissioner, NSW Fair Trading, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee today?

Mr STOWE: Commissioner for NSW Fair Trading.

Mr SMITH: Director of the Security Licensing and Enforcement Directorate of the NSW Police Force.

CHAIR: I draw your attention to the fact that your evidence today is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in action in relation to the information you provide. I also note that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act. Commissioner, before we ask questions would you like to make a brief opening statement?

Mr STOWE: No, thanks.

CHAIR: And Director?

Mr SMITH: No, thank you.

Mr ROBERT FUROLO: I was wondering whether the gentlemen could give a brief explanation of their roles in this process.

CHAIR: As you are aware, the Committee is inquiring into debt recovery. You just might touch on your department's role currently in relation to the process of debt recovery, which may be of assistance to the Committee.

Mr STOWE: Certainly. We are not the specialist regulator, the NSW police are, but we do get some small number of complaints about debt collection and I am happy to talk about that to the Committee at some stage during the hearing. We also have some powers under the Australian consumer law that can relate to debt collection. We are able to take action, for instance, where businesses are involved in physical intimidation or harassment or that sort of activity in relation to the provision of services or payment of moneys. There are other provisions under the same legislation that relate to false and misleading representations and other forms of conduct that we can also exercise. We are also a funder of financial counselling services in New South Wales which get involved in issues relating to hardship as a consequence of debt collection activities. Again, I am happy to speak about that.

Mr SMITH: The Commissioner of Police administers the Commercial Agents and Private Inquiry Agents Act and regulation. So, my area represents the Commissioner in that in regulating the industry. Debt collection is a licensable activity under that legislation. My area is primarily responsible for licensing. We are not resourced, or empowered for that matter, in relation to handling complaints about the industry and we refer those out to local area commands when we do receive them for investigation.

Mr JONATHAN O'DEA: What does licensing actually mean? We heard some evidence earlier today which was less than complimentary of your area so we need to test that. How many people have you got and what does licensing actually mean? What do they do?

Mr SMITH: As the name of my Directorate suggests, our primary focus is the security industry. I have 74 positions under me in the Directorate. The commercial agents and private inquiry agents regulation is a small aspect of our business. My area is also responsible for doing probity checks for tattoo parlour licences, for which Fair Trading is the regulator. We also do probity checks for WorkCover in relation to explosive licensing and we have a small role in relation to wool, hide and skin dealers. So the resources that I have, none are dedicated to commercial agents and private inquiry agents licensing. The applications for licences are processed by a team who process also, and primarily, security licensing. Then a determination is made by what I call the Adjudication team, which decides who should be issued and who retains licences. Again, the primary role of

that team is to look after security licensing. Commercial agents and private inquiry agents would represent less than 10 per cent of total licences that my area is responsible for.

Mr JONATHAN O'DEA: In light of that, and the fact that Mr Stowe's equivalent in at least two other interstate jurisdictions is the oversight body for those commercial agents and private inquiry agents licences in those areas, is there a compelling reason or rationale why your area, which I suppose comes within a broad police function— which ICAC warned against, albeit some time ago—should stay there, given that it seems to be a fairly small focus as opposed to moving to Mr Stowe's area?

Mr SMITH: I guess the decision of where it sits would properly be a matter for the Government and the Minister. However, I note that other jurisdictions—I think it is only Tasmania that also regulates it through police. Certainly, when the Ministry for Police and Emergency Services called for a review of the legislation and the NSW Police Force was invited to make a submission to that review, our recommendation was that it be transferred over to Fair Trading.

Mr JONATHAN O'DEA: That may be a recommendation that this Committee makes.

CHAIR: Would you see it as a function that would sit fairly within your portfolio?

Mr STOWE: I agree with Mr Smith that it is really a policy decision for the Government.

CHAIR: But it does sit within Fair Trading in other jurisdictions.

Mr STOWE: That is correct, it does. In Queensland and Victoria it certainly does.

Mr STEPHEN BROMHEAD: And you are already dealing with other aspects of commercial agents?

Mr STOWE: Some aspects, yes.

CHAIR: Apart from taking the licence fee and doing probity checks, what else does your department do in relation to commercial agents?

Mr SMITH: It really is the awarding of the licences and then we monitor the probity of individuals who are issued a licence throughout the term of their licence. For example, if a licensee is charged with an offence we will be notified of that within 24 hours and then we will make a determination of whether the licence should be cancelled. It is the administration of the licences.

Mr STEPHEN BROMHEAD: Is there a training course that has to be undertaken?

Mr SMITH: There is. A person who applies for what we call an operator licence, or an employee licence, under the legislation is first issued a probationary licence. There are no training requirements associated with that, but there is a requirement that they work under supervision. If they wish to transition off that probationary licence to an unrestricted licence, they are required to undertake a training course, which, in the case of commercial agents, is a Certificate III in Mercantile Agents.

Mr STEPHEN BROMHEAD: What is the time frame for that course?

Mr SMITH: It is at the discretion of registered training organisations. Unlike with the security industry, we do not regulate the provision of that training. So, in consultation with TAFE primarily, when the legislation was first created we identified a national training package that was of relevance, selected the units of competence that were required. Any member of the industry is able to go off to a registered training organisation that has the qualification on its scope of registration and do the course in accordance with what the registered training organisation offers. Some may offer pure face-to-face; some may offer an online component, which reduces the number of face-to-face hours. That is not something that we regulate.

Mr JONATHAN O'DEA: Mr Stowe, have you looked at what would be involved if you took over responsibility for that commercial agents and private inquiry agents area?

Mr STOWE: Yes.

Mr JONATHAN O'DEA: Do you have a view in terms of things that you think you could do more effectively than are currently being undertaken, based on the interstate experience?

Mr STOWE: There have been some discussions at agency level between the departments in terms of a possible transfer of responsibilities and any transfer we have will be predicated on the provision of resourcing to enable that to happen. For instance, the licensing system is not currently on the government licensing system and all of our licences are and it would cost them hundreds of thousands of dollars to convert to our system. So we would want to see those things in place should they come to our agency for administration.

CHAIR: There has been some suggestion by other witnesses that a negative licensing scheme might be appropriate. Do you have any views in relation to that, Commissioner?

Mr STOWE: It is very hard for me to comment because I am not the current specialist regulating this area. I am aware that that is the system that is used in Victoria and my colleague there tells me it has been successful from her point of view.

CHAIR: When your colleague in Victoria says it is successful did they give any indication or any reasons why they thought that was the case?

Mr STOWE: No, it was more a general comment; it was not a detailed analysis of the change to that system other than it was working, in her view, quite successfully.

CHAIR: Director, do you have any comment?

Mr SMITH: Again, if a negative licensing scheme was to be adopted in New South Wales that would be a matter for the Minister, but I could comment that a couple of years ago there was a harmonisation project looking at harmonising regulation of the industry across Australia and the NSW Police Force was asked for its views on which of the options were being considered. Our recommendation was that negative licensing, or I think it was phrased as mandatory exclusion arrangements, would be the best option to deal with a number of issues. But, again, that was looking at a national model. What model might best suit New South Wales in isolation would be a matter for the Minister.

Mr STEPHEN BROMHEAD: One of the issues raised this morning was with the training programs, that only every couple of years you could get to do the training to get your licence.

Mr SMITH: I cannot comment on that, but, again, because the offering of the training is by commercial organisations, obviously it will reflect market demand—a supply and demand situation. For instance, if the training organisations are not seeing a huge demand for that training to occur then no doubt courses will be rarely offered. But, as I say, it is not an issue that we regulate and licensees do have the option, as I indicated: they can stay on the probationary licence scheme with no qualification requirements but there is a supervision requirement, but anecdotally that is not too onerous for the commercial agents debt collection industry, where a lot of it is happening within offices and call centre type environments, for a licensed person to be there to provide that supervision.

Mr ROBERT FUROLO: Your section issues the licences for commercial agents and private inquiry agents. Do you also remove licences from people?

Mr SMITH: Yes, we cancel them.

Mr ROBERT FUROLO: What is the process that leads to that?

Mr SMITH: We remove licences as we refuse licences—on probity grounds. As I indicated, when we issue a licence to someone we currently use within Police what we call the Integrated Licensing System—it is 'Integrated' because it is integrated with our operational policing system. Every night a full list of licence holders is run across the policing system and in the event that there is a charge or even, for that matter, an information report that we think would be of relevance, my Adjudication team is aware of that the next day and we will see whether that activates any grounds under the legislation to cancel the licence and we will take that action accordingly.

Mr ROBERT FUROLO: So it is not necessarily on the basis of complaints about their actions or behaviour in the course of their duties, it is really a procedural or regulatory issue?

Mr SMITH: It is based on character. The legislation prescribes the grounds on which a person becomes a disqualified individual under the legislation and they typically relate to offences that people have committed. I would say, in relation to complaints that my area would receive, no more than, on average, about 12 complaints annually are about debt collectors, and the vast majority of those—we are probably talking 10 out of the 12—would be in relation to people operating without a licence. In terms of conduct-related complaints—

Mr ROBERT FUROLO: Is yours the area that complaints should be directed to?

Mr SMITH: In the first instance, if it was related to a licence holder or, again, a person operating without a licence, yes, and then we will package that up with some relevant information and send it out to the local area commands to investigate that matter for us.

Mr ROBERT FUROLO: I just want to clarify this because this is pretty significant: Of all the commercial agents and private inquiry officers operating in New South Wales and all the files they are managing around New South Wales and the billions of dollars they are pursuing on behalf of their clients, they are getting around a dozen complaints a year?

Mr SMITH: Yes. If I can just separate it: that relates to commercial agents. Again, my comments about the NSW Police Force's recommendation to the review in relation to where the responsibility might best sit related also only to commercial agents. We receive more complaints about private inquiry agents and it is Police's position that regulation of that industry does sit properly with Police, so it has been our recommendation. But, again, it is a matter for the Minister. But for private inquiry agents we receive more conduct-related matters—there are some infamous people involved in that sector of the industry, but in relation to commercial agents there are insignificant numbers of conduct-related matters.

CHAIR: But are they not too subject to probity and fit and proper person processes?

Mr SMITH: They are, yes. We definitely do the probity checks. In terms of complaints, obviously I am distinguishing there between a complaint about criminal conduct which results in a police charge, and that will come to our attention and we will revoke a licence on that. I am talking more about those issues that might be akin to harassment complaints and that sort of thing.

Mr JONATHAN O'DEA: Can I just clarify, because you have now drawn a distinction between commercial agents and private inquiry—can we call them private investigation agents?

Mr SMITH: Yes.

Mr JONATHAN O'DEA: We heard from a body earlier today which was one of the bodies that represented their industry. The comments that I made earlier in relation to the ICAC comments and the oversight of the Security Licensing and Enforcement Directorate equally applied to PIs as to commercial agents. In terms of what was put to us earlier today, why would you make that distinction in terms of wanting to maintain oversight of the PI industry and am I right in surmising that that is also regulated by consumer affairs or Fair Trading in those other jurisdictions?

Mr SMITH: Firstly, I do see commercial agents and private inquiry agents as two disparate industries for some reason sitting under a single piece of legislation, but typically in other jurisdictions private investigators are regulated through the jurisdiction's security legislation. So, the recommendation that the NSW Police Force made to the review of the Commercial Agents and Private Inquiry Agents Act was that PIs become a class of security licence under our legislation. In saying that, the regulation of the security industry is mixed up across jurisdictions between police and consumer affairs agencies. The police regulate the security industry in New South Wales, WA and Victoria, and in other jurisdictions it is either consumer affairs or a regulatory affairs type body.

Mr JONATHAN O'DEA: Mr Stowe, do you have a perspective on that issue?

Mr STOWE: I think in most other jurisdictions the private inquiry agents are not in the portfolio of Fair Trading and consumer protection, it is just for debt collection.

Mr JONATHAN O'DEA: A separate question: Mr Stowe, from memory, you entered your role two or three years ago?

Mr STOWE: Yes.

Mr JONATHAN O'DEA: Mr Smith, how long have you been in your role?

Mr SMITH: In my current role about five years, but I have been with this area in a senior role since 2003.

Mr JONATHAN O'DEA: I might direct my question to you, Mr Smith, because it is more of a historic nature. There were two events that seem to have fallen over to some extent historically; one was the 2009 review of the Commercial Agents and Private Inquiry Agents Act where there were a number of recommendations made, I understand. I am not sure what the status of them are currently, but some of them seem not to be acted on by the previous Government. I am wondering if you have got a perspective on that and then I wanted to ask a question about the national harmonisation historically.

Mr SMITH: The Act commenced in May 2006 and an early statutory review was, I think, announced by the then Minister in late 2007. The review was conducted by the Ministry for Police and Emergency Services, which, you may be aware, is a separate agency to the NSW Police Force. I understand the review did stall in relation to the harmonisation project. So, because there was that review at a national level of what might the industry look like in its regulation, that put a hold on the review of the New South Wales process.

Mr JONATHAN O'DEA: And in turn that harmonisation process stalled, so it might be worth revisiting the New South Wales recommendations and the harmonisation at some stage.

Mr SMITH: Mr Stowe might be more familiar with the harmonisation project because it was driven by consumer affairs.

Mr STOWE: Whilst I have only been Commissioner for three years I did work in the portfolio for 25 years, so I have got a fair bit of background. That particular exercise was initiated by Fair Trading Ministers, not by COAG, under which some of the other harmonisation projects were achieved. It was meant to try and see if there was potential to have harmonisation across the jurisdictions. They came to the conclusion that because there were significant differences that it was not worth pursuing. Ministers had made a similar decision with charity collections last week. So it was really a case of Ministers thinking it was not worthwhile to continue with the exercise because of the significant differences in the regime.

Mr JONATHAN O'DEA: Are there plans to revisit the recommendations from the 2009 review?

Mr STOWE: There is no appetite for a harmonised licensing regime across jurisdictions at this stage, no.

Mr JONATHAN O'DEA: My understanding is that the review of the Commercial Agents and Private Inquiry Agents Act was a State-based set of recommendations, which were then stalled, as I understand it from Mr Smith, because there was a harmonisation exercise. I am just raising it. You might take it on notice, the recommendations from that review which were not taken forward—or the status of some of them is uncertain and some of them I think were stalled—whether there is anything there that may require you going back and having a look at it and that you think is worth progressing as part of this inquiry's recommendations.

Mr SMITH: I understand that the Police portfolio submissions for this inquiry did indicate that the review of the Commercial Agents and Private Inquiry Agents Act has recommenced following the stalling of that harmonisation project and the Ministry of Police is going to look at those issues.

CHAIR: We are still awaiting receipt of the whole-of-Cabinet response. You are probably in advance of us.

Mr SMITH: I did not think so.

CHAIR: Thank you, Commissioner and Director, for your time; it has been much appreciated. It has added greatly to our deliberations. The Committee may wish to send you some additional questions in writing, the replies to which would form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr STOWE: Most certainly.

Mr SMITH: Definitely.

CHAIR: The Committee has resolved that answers to questions taken on notice and additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. That concludes our questioning today and I thank you very much for appearing today. I wish you well in the future.

(The witnesses withdrew)

(Short adjournment)

GRAEME LESLIE HENSON, District Court Judge and Chief Magistrate of the Local Court, sworn and examined:

CHAIR: Could you please advise the Committee in what capacity you are appearing today?

Mr HENSON: I appear as a judge of the District Court and the Chief Magistrate of the Local Court, but primarily to represent the views of the Local Court.

CHAIR: I draw attention to the fact that your evidence is given today under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in relation to the information you provide. I also note that any deliberate misleading of the Committee may constitute contempt of the Parliament and an offence under the Parliamentary Evidence Act. Before we commence questions, would you like to make a brief opening statement?

Mr HENSON: No, I think my letter of 16 May to the Committee sets out the views of the Local Court.

CHAIR: Could you explain to the Committee the breakup of the civil jurisdiction of the Local Court?

Mr HENSON: The jurisdiction in general is one of $100,000. There is a marginal consent jurisdiction over $100,000 and no-one needs to worry about that. At the bottom of it is the small claims division of $10,000. That is primarily presided over by assessors. They are not members of the judiciary; they are employees of the Attorney General's Department. They deal with matters on an informal basis and a cost-effective basis. There is a limitation as to costs in the small claims division. Claims over $10,000 go into the general division and some claims that are under $10,000, if the assessor thinks it appropriate, may be transferred to the general division if the issues of law are complex.

CHAIR: In your submission you have suggested that the level should be lifted to $20,000 for small claims?

Mr HENSON: I have.

CHAIR: If it was lifted to $20,000, what percentage of work would be directed through that process?

Mr HENSON: It would be probably close to 80 per cent of the civil litigation in New South Wales. Although we tend to focus upon multi-million dollar company transactions in the Supreme Court, the reality is that the pyramid of escalating numbers is a pyramid of declining numbers—the higher you go, the less matters are involved in civil litigation. The broad area of jurisdiction is exercised within the Local Court in the $20,000 and less category. The other advantage of increasing the small claims division is because it is an approach that is consistent with non-litigious outcomes, that is, statements are tendered, there is an attempt to mediate or arbitrate on the issues and strict principles of law do not apply because most people are unrepresented or they are not familiar with the laws of evidence, as the case may be. It is a cost effective and time effective process which is available right across the State, and that of course is the great advantage of the Local Court, that it does sit state-wide, so you provide more people with access to justice in respect of civil claims at a local level or a cheaper cost.

CHAIR: Is there anything that can be done better with the civil jurisdiction and the Local Court to improve outcomes?

Mr HENSON: I do not think so. The Productivity Commission last year for the first time assessed the performance of all of the courts across Australia in terms of timeliness and the Local Court came out as the leading court across the Commonwealth in that regard. We go pretty well. There is an issue with claims over $20,000, that they tend to involve the legal profession, and I am not casting any pejorative assertion against the legal profession, but when you have lawyers involved matters become more complicated because the law, as opposed to the facts, is viewed from a different perspective, but again in terms of timeliness the delay in the Local Court for defended civil litigation is something in the order of 24 weeks, which is about as good as you can get it.

CHAIR: In relation to the appeal process, is there any issue with how appeals in civil matters are dealt with?

Mr HENSON: You can only appeal in small claims through the Supreme Court on a point of law. The same applies for matters in the general division before a magistrate; they go to the Supreme Court on a point of law. Whether they occupy a significant amount of the Court of Appeal's time or the Supreme Court at first instance's time, I am unable to comment. My intuition says they do not, that the rate of appeal against decisions of magistrates is either stable or falling.

Mr JONATHAN O'DEA: I have a couple of questions in relation to process, particularly drawing on comments made by previous witnesses today. Some suggested that commercial agents should be able to appear in routine type matters, certainly not a matter that proceeds to hearing, but perhaps a default judgement. A commercial agent might have limited ability to appear as a matter of course rather than specifically by leave. Do you have any comment on that?

Mr HENSON: Nobody needs to appear on default judgements, it is only a question of filing the affidavit of debt and then judgement is entered by the registry.

Mr JONATHAN O'DEA: What about on a mention?

Mr HENSON: I would be hesitant, without knowing the reason why.

Mr JONATHAN O'DEA: Ostensibly to save costs.

Mr HENSON: Whose costs? No commercial agent is going to appear as an act of good—

Mr JONATHAN O'DEA: I am not arguing; I am just putting the proposition to you to get another perspective on suggestions that have been put to us.

Mr HENSON: There is very limited need for anybody to appear in small claims. In the general division predominantly they are lawyers who appear. Commercial agents, as I understand it, are generally people who collect liquidated debts or small amounts. The difficulty is the relationship between the commercial agent and the plaintiff as to whether the commercial agent is empowered to make decisions or statements to the court which effectively bind the plaintiff in subsequent proceedings.

Mr JONATHAN O'DEA: Another example was given, particularly drawing on difficulties, of occasions when a rural client or rural-based solicitor have to appear in person, sometimes at considerable expense, catching a flight for a five-minute appearance because they are a party or the solicitor on the record and they are required to appear—and again I am not creating the scenario but am conveying a situation that was relayed to us earlier today. I know there is discretion to use video conferencing and teleconferences, and other use of telephones.

Mr HENSON: Yes.

Mr JONATHAN O'DEA: Do you think that is adopted enough across your court in a broad sense?

Mr HENSON: Access to AVL is limited by the investment of Government in the installation of AVL technology. The Attorney General's Department has received a vote, for want of a better term, of $20 million to expand the rollout of AVL over the next four years, so accessibility through the use of technology will increase exponentially during that period of time. There are small courts in the country where we only attend on a semi-regular basis where the investment in technology would be not cost effective, but again, without understanding the essence of the statement made, I am mystified as to its validity. The only time really that you would require a country practitioner to appear before the court would be at the time that the court has the matter under review, where all the statements have been filed and the matter is to be allocated for hearing, and the importance of having that person there is to get a professional assessment of how long it will take to hear the matter.

Ms SONIA HORNERY: This is a question as a regional member of Parliament in terms of the importance of local courts. In the Hunter recently we have seen the closure of some local courts and in my patch at Wallsend we have lost the local registrar at the Wallsend Justice Access Centre. My concern is that the working class people of Wallsend that I represent often used that person to get information to keep them out of trouble. When these situations occur, do the courts end up seeing more people in their structure because of a lack of education, knowledge and information? Secondly, East Maitland court has recently been closed, which

means that people have to get to Newcastle, which is not so easy, to attend a court session. Does that provide problems additionally in the whole court structure because of the tyranny of distance and access to public transport?

Mr HENSON: Wallsend I think was a court that was taken out of action by gazette by a previous government. The Local Court does not sit at Wallsend; it ceased to be a court when Toronto opened. East Maitland is a court that is almost exclusively used by the District Court; the Local Court sits at Maitland proper. So in terms of the operations of the court in the Hunter, there have been no closures during the last decade, but does the lack of accessibility to the Local Court cause some social problems? It is a difficult question. I do not know is, I think, the safest answer to give to that.

Ms SONIA HORNERY: The Local Court closed before I was elected in Wallsend, but there was a promise made to my predecessor that a chamber magistrate would be operating from a shopfront in Wallsend and that Justice Access Centre has now closed, so I guess I have a bit of a problem on behalf of my constituents that that is no longer there if they need it. It was only one day a week and became inoperable anyway because no-one was there to man the phones throughout the week and no signage was provided by the Government, so people did not know when it was going to be open. I just think that community access to information is really important and I understand that it was because of cutbacks that this occurred.

Mr HENSON: I could not agree more. The term chamber magistrate is an old and ancient term. They are not magistrates in a judicial sense; it was just a term that was part of the old Petty Sessions court system. Chamber Registrar would be the modern equivalent. I am not responsible for the staffing of the registry operations of local courts; nor is the Chief Magistrate responsible for closing courts. That is a decision of the Attorney General of the day. I would agree with you, however, that the decline in the availability of legal advice over the years and the concentration of resources into the use of telephone access has probably downgraded the quality of advice and certainly the accessibility of it, and I think people tend to vote with their feet in those circumstances, shrug their shoulders and walk away—and that is disappointing.

Mr ROBERT FUROLO: We have heard evidence today from organisations representing commercial agents expressing concern about the external dispute resolution process. We have had submissions from Legal Aid Services lauding the role of external dispute resolution in the debt collection process. In your experience, from your point of view, is there value in external dispute resolution?

Mr HENSON: If there was not a value, it would not exist, I think is probably a common-sense response to that. Of course there is a value if people can resolve their legal affairs quickly. However, and again my comments apply only in the Local Court, where you have access to justice and the ability to hear and determine a matter in the hands of a member of the judiciary in very short order, I question whether alternate dispute resolution is as relevant as it might be in the Supreme Court or the District Court where the delay between the commencement of proceedings and the resolution is measured in years rather than months. Beyond that, I think I am probably wise not to comment.

Mr ROBERT FUROLO: One submission, I think from Australian Creditor's Alliance, which was a very comprehensive submission, referenced a dispute over the restricted legal costs applied for the Small Claims Division and provided three different figures. The submission indicated that various costs would be awarded depending on who was making the award and mentioned figures of $481.60, $697.70 or $1,179.20. The submission said that any or all of those figures could be applied in certain circumstances. Is the legislation sufficiently clear or is there lack of clarity?

Mr HENSON: Costs awarded are only in accordance with the scale of costs determined by the government of the day. They are not costs allocated on the whim of whoever is sitting, whether it be a magistrate sitting in the Small Claims Division or an assessor. They are scale costs. Lawyers are limited to the costs equivalent to default judgement and, let us be frank about it, the Small Claims Division is intended to reduce the complications of having lawyers in it.

Mr ROBERT FUROLO: Your view is that there is no confusion about the costs?

Mr HENSON: No. I do not see why there would be confusion.

Mr JONATHAN O'DEA: I return to two propositions that were put to us and, again, I am just trying to get your perspective rather than assert their truthfulness or veracity. The first area flows from the question of

privacy protection and trying to balance that between the need to identify potential debtors. The Marrickville Legal Centre recommended introducing a low-cost procedure in the Local Court and New South Wales Civil and Administrative Tribunal for preliminary identity discovery to replace the Uniform Civil Procedure Rule 5.2 to allow for a simple, low-cost method to identify and locate debtors in small claims matters. Do you have any comment on that proposition or any other way to better identify people who have gone missing?

Mr HENSON: No, I think is the short answer, but the more appropriate answer is that the Uniform Civil Rules are Uniform Civil Rules and that is they are uniform across all tiers of jurisdiction and in order to change the rules a rule has to be put to the Uniform Rules Committee Chair by the Chief Justice.

Mr JONATHAN O'DEA: Do you have a view—

Mr HENSON: Without understanding the problem in greater depth, no I do not. Is this to do with people who park over times in car parks and the like?

Mr JONATHAN O'DEA: We may just send some information with the proposal that the centre put forward, if that is appropriate, but it is for some sort of preliminary identity discovery to replace that uniform law. As I said, the suggestion relates to your court specifically, which is why I am putting it to you. You may not have had forward notice of any such proposal, so perhaps it is better to put it on notice if we want to pursue it.

Mr HENSON: I would be pleased if you would.

Mr JONATHAN O'DEA: The other proposal is that some stakeholders have argued that court documents and procedures are complex and cumbersome and suggested that forms and processes for the Small Claims Division should have more simple, concise, plain-English explanations. Would you agree that more could be done to simplify and explain court documents and procedures? If so, how would you go about seeing that apply?

Mr HENSON: The minute you redraft something, somebody else who was happy with the first draft starts to complain about the second draft. Again, I do not understand the exact nature of the problem. I would have thought that small claims matters are clear and unambiguous, but unless you are told where the ambiguity lies, it is hard to address it. Because it is an informal jurisdiction, there is no insistence on the rules of evidence for statements filed by the respective parties in the proceeding. So they are, in effect, in their own words rather than the words of the court. But, again, I can take that one under advisement if you wish.

Mr JONATHAN O'DEA: Sure, and we might supply some of the comments that were made in specific context.

Mr STEPHEN BROMHEAD: Continuing with that, one suggestion is that people go to the Clerk of the Court and get help to issue a statement of claim. Luckily for the creditor they know who the debtor or defendant is and their address so it can be served on the person. Then they go to the call-over where they are told, "Small Claims Division, you need to prepare a statement. Go off and prepare a statement." They have to be filed by a certain date and then "you'll get a notice when that's done to come back to court." When the person asks, "What's a statement?" they might be given a blank piece of paper and told, "You just write it out" rather than, as in some areas where proceedings are more user friendly, being provided with a pro forma document or precedent of what the statement looks like to try to assist the person.

It is a small claim so they are not going to pay a lawyer to prepare the statement for them. The suggestion was for the court to be more user friendly in assistance by, say, pulling out option D and saying, "It is a debt-recovery matter. There is an example of a statement and attached to that are the types of invoices and other evidence you need." That is what that suggestion referred to.

Mr HENSON: That observation feeds into Ms Hornery's observation that the decline in the availability of informed advice within court registries leads to that sort of outcome. You talk about the court; there is a difference between the registry and the judiciary. You are talking more about the assistance that may be available within the registry. People who do not have a legal background would be very loathe to proffer legal advice because it may be wrong and may open them to consequences. But I understand what you are saying. Perhaps it could be in plain English and a pro forma might assist unrepresented and quite often people whose education is perhaps not as it might otherwise be. It is an issue, I accept that.

CHAIR: Thank you for your attendance today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr HENSON: Yes, of course I would. If I can assist in any way, I am happy to do so.

CHAIR: The Committee has resolved that answers to questions taken on notice and additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. That concludes our questioning today. Thank you for attending and we wish you well with the rest of your endeavours.

Mr HENSON: And the same to you Mr Doyle. Thank you.

(The witness withdrew)

IAN HENRY PHILLIPS, Principal Advisor, Technical and Advisory Services, Office of State Revenue, affirmed and examined:

CHAIR: In what capacity are you appearing today?

Mr PHILLIPS: I am here as a representative of the Office of State Revenue, which is part of the Office of Finance and Services, which is also part of the Treasury and Finance cluster.

CHAIR: I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in action in relation to the information you provide. I note also that any deliberate misleading of the Committee may constitute a contempt of the Parliament and be an offence under the Parliamentary Evidence Act 1901. Before we commence with questions would you like to make a brief opening statement?

Mr PHILLIPS: We did not lodge a submission. I am happy to just take questions or I can give you a brief overview of OSR's role in debt management as a start, if you like.

CHAIR: That would be most useful.

Mr PHILLIPS: I will try to do it in a fairly ordered way. Our debt management role can be divided primarily into two areas: first, the Fines Act, which is administered by the Commissioner for Fines Management, and taxes and grants, which are administered by the Chief Commissioner of State Revenue. The Chief Executive Officer of OSR is both the Commissioner for Fines Management and the Chief Commissioner of State Revenue. Under the Fines Act we have responsibility for collection of fines imposed by Crown bodies and also by other bodies, such as councils and government commercial authorities. We call them our commercial clients. I have just an overview of the revenue and related figures for the 2012-13 year. In 2012-13 we collected $598 million in revenue from fines. The debt at 30 June 2013 was $741 million.

We wrote off $202 million. That was part, or as a result, of a government decision to take a more commercial approach to write-offs. There always has been a reluctance to write off fines debt because it is part of an extension of the system of enforcing justice. The write-offs are done under guidelines approved by the Minister. In 2012-13 we collected $19 billion in revenue from taxes, levies and duties. The main revenue heads are payroll tax, stamp duty and land tax. At 30 June 2013 we had $346 million in debt. That represented 1.86 per cent of annual revenue collection. We also hand out grants: First Home Owners Grant Scheme—FOGS—is the main one. In 2012-13 we handed out $210 million. A very small proportion of that is recalled and there is some debt recovery involved in that.

The Fines Act essentially is a code for the recovery of fines. It specifies or sets out the regulation of what we do. We have about 70 per cent of fines paid within the time allowed under a penalty notice. Another 5 per cent is paid after the issue of an enforcement order, and that includes an additional charge of $65. We then have various enforcement powers, which are specified under the Fines Act. Commencement of licence and registration sanctions through RMS generates about 10 per cent of the payments, and civil sanctions, garnishee orders and property seizure orders the Commissioner of Fines Management is empowered to issue. Property seizure orders go to the Sheriff's office for enforcement. We collect about 3 per cent of revenue from that process. We use private sector debt collectors for tracking down people that we have been unable to find; they are the people who go missing. That program has only been running for two or three years and that currently generates about 3 per cent. We have about 5 per cent paid by instalments and unpaid—an annual rate of about 5 per cent. That collection of a year's fines can take several years but ultimately that is where we end up.

The tax recovery is really governed by the Taxation Administration Act. It is quite a different process. Most taxes are paid by return or self-assessment. If we do issue assessments, that creates a liability. The taxpayer has a chance to object and appeal, so disputes are settled generally and that explains why the debt level is so much lower for taxes. There are also some incentives built into the tax legislation. For duties, documents have to be stamped in order to be used in legal proceedings and the Land Titles Office [LTO] will not register a transfer of land unless the duty is paid. Land tax is a first charge on land and we can lodge caveats if it is not paid and that has to be cleared before the land is sold.

As to other methods, we are able to issue demands on third parties under the Taxation Administration Act the same as a garnishee order; it has the same effect and it has its own offence provision in the Taxation

Administration Act. We issue those on employers and banks. There is also joint and several liability applying to grouped companies and businesses and we can impose a company's liability on the director if it is not paid and the director then has to either arrange for the company to be put into liquidation or administration within 21 days or the director then incurs the debt. That is really a method of ensuring that a company that is not able to meet its debts does not continue to incur tax liabilities. There are other incentives—interest and penalty tax accrues on unpaid tax at a total rate currently of about 10.5 per cent. It includes an 8 per cent premium and a market rate which is about 2.6 per cent. In the extreme, we can also impose penalty tax, although that generally only applies to companies that have failed to lodge a return and pay any tax. That is it in a nutshell.

CHAIR: That is a very extraordinary overview. I note you engaged the Sheriff's office in some recovery action. Can you tell us a little bit about that and how satisfactory that is?

Mr PHILLIPS: The main area in which the Sheriff's office is involved is in fines. I am not sure about the figures. I have seen figures that we issue something like 20,000 property seizure orders which go to the Sheriff for service. They tend not to be very effective simply because they are directed at people who really do not have much in the way of assets and there are flaws in the system because a knowledgeable debtor can fairly easily evade the Sheriff, and you have seen it in other submissions, I think. The debtor claims not to be the owner or has no visible assets or simply avoids being there at the appropriate time.

CHAIR: Are you aware of any discussion about transferring the Sheriff's debt recovery function to the Office of State Revenue [OSR]?

Mr PHILLIPS: I am aware that is being considered. I think there is a joint project team which has been working on it but that is just a proposal at this stage or a study. It is not just a study of the transfer, it is a study of the effectiveness or whether there are other options such as outsourcing to private debt collectors or private organisations and I believe that model is applied in some other jurisdictions including Western Australia, but it is subject to government approval and the project study has not yet been completed, I understand.

Mr JONATHAN O'DEA: Just on that last point, what benchmarking do you do of your operation against equivalent interstate operations and indeed against more private sector arrangements like the Western Australian one?

Mr PHILLIPS: We used to have regular benchmarking, I think, using one particular firm. I do not know the current position but I understood that it was not very effective because each jurisdiction applies different rules; they have different taxes, different modes of operation and it was not a valid comparison with other jurisdictions. I guess there would also be some political industry politics involved in commissioners not wanting to be seen to be last on the list but, as I understand it, it was not very effective. I have not seen the results so I do not know where New South Wales sat.

Mr JONATHAN O'DEA: I would have thought that for something as simple as collecting traffic fines it would be fairly easy to benchmark between different jurisdictions but I am not close enough to it. Certainly it smacks, on my superficial assessment, of a lack of accountability?

Mr PHILLIPS: I have not seen any benchmarking of fines. I have only heard of the tax side of the benchmarking. There may well have been some benchmarking done. I can ask.

Mr JONATHAN O'DEA: Could you take that on notice, as I would have thought that the fines management side of things would be fairly easy to compare different jurisdictions. We are unfortunately coming up against a general lack of knowledge across the sector of how effective some of the private bailiff arrangements have been as well, so benchmarking generally seems not to occur, which is disappointing given that all jurisdictions backed away from the harmonisation project and seem to go each their own way—again that is my observation. I know it is not totally related to your area of operation but I am just saying it is perhaps a frustration that there is not more of a transparent comparison of approaches between jurisdictions generally.

Mr PHILLIPS: Are you talking about harmonisation in the fines management space?

Mr JONATHAN O'DEA: I am talking about in a number of areas; certainly fines management but also enforcement within the Sheriff's office and commercial agents has been more of a focus today but it is a frustration across, dare I say it, all government functions and areas. The other area I wanted to ask about was garnishee orders. I am mindful of the potential for your area to grow in terms of its potential pursuit of debts for

the future, both public and private. It was pointed out that garnishee orders can apply currently to bank accounts in a more onerous way than might apply to someone's wages in the sense that there is a protection under section 122 that you have to leave a certain amount of people's wages but you can clean out their bank account. There is a suggestion that there ought to be some greater protection. Do you have a perspective on that?

Mr PHILLIPS: I know that our office has a process for people whose bank account is, as you say, cleaned out to make application to have the funds returned to them. I have seen one submission where there was a case study which indicated that the person only got a small part of their money back. I could not really comment on an individual case but we do have a process for people to get their money back if we have overstepped the mark.

Mr JONATHAN O'DEA: This is my personal view but can I put to you that it is not unreasonable to leave a small amount in an account. I would advocate that it would not be unreasonable that you could get back $100 and you might leave a couple of hundred bucks in an account, which means that someone is not left in a totally vulnerable position. I put that to you to see if you have a counter-perspective because I just want to test that proposition?

Mr PHILLIPS: When we issue a garnishee order on a bank—for an employer it is different; the employer knows how much they are paying. With a bank, we issue a garnishee order for a particular amount and I think it is probably difficult also for the bank to make a decision about how much it should leave, given that it is not a wage; it is simply an amount of money in a bank account. I am not sure that there is—

Mr JONATHAN O'DEA: Which these days might be there because the wage has just gone in or the Centrelink payment has just gone in?

Mr PHILLIPS: That is right, yes. I guess it is extra hard on someone on Centrelink, but all we can do is provide a process to refund that money in those cases. If someone in our office has been unfair in a particular case, then there is a process for complaint and review and I am sure they would be dealt with some sympathy.

Mr JONATHAN O'DEA: Do you have indications of how quickly they are dealt with and the response of your organisation?

Mr PHILLIPS: That sort of thing would be treated urgently. We have a turnaround time of 21 days for complaints but for something like that where someone needed the money, I think it would be dealt with basically as soon as possible.

Mr JONATHAN O'DEA: It becomes even more relevant if the enforcement of debt is outsourced by the Sheriff's office to your organisation. There is clearly an advantage for government in pursuing its debts over the private sector pursuing its debts in terms of the hurdles and the exemptions to privacy principles in legislation in the sense, as I understand it, there is an exemption to the assumption that information only be used for the purpose for which it is given in collection of public revenue. That same exemption obviously does not apply to the private sector. Do you have a perspective in terms of the treatment of individual or business debt compared to government debt and if you took over the Sheriff's function, what additional complications would you see for your organisation in having to pursue private debt?

Mr PHILLIPS: That is a difficult issue—certainly a conflict because OSR, as you said, has its own debts that it wishes to collect. It would be responsible for collecting debts for private businesses and there would have to be some process or some rules built into the process to ensure that we were not collecting the money and paying off the government debt first. Those sorts of issues would have to be dealt with before the system was implemented, I think. There were other aspects to your question?

Mr JONATHAN O'DEA: Privacy is the central part of this and how that question ought best be dealt with, particularly the distinction between public and private?

Mr PHILLIPS: Privacy is something that we have always taken very seriously. I note that the Privacy Commission has accepted that the use of personal information in debt recovery may be justified to protect the public revenue. That is certainly built into our legislation and into the Commonwealth and the other States legislation. Both the Fines Act and the Taxation Administration Act allow information to be exchanged between fines administration and tax administration for the purposes of those particular Acts. However, the Committee may know that there is some legislation before the Parliament for OSR to start taking responsibility for

collecting ambulance debts. The privacy issues there were addressed by limiting the use to which information we obtained in collecting ambulance debt could be used. So it prevents it being used for tax administration or fines administration. That sort of control or rule can be imposed on any new function we take over. We developed the legislation in consultation with the Privacy Commissioner and the Commissioner was happy with the outcome.

Mr JONATHAN O'DEA: So you treat ambulance debt in a similar way to private debt?

Mr PHILLIPS: Yes, but we do not use the information obtained in the recovery of ambulance debt for other—

Mr JONATHAN O'DEA: I understand that but would you see ambulance debt as public revenue? Is it subject to that exemption under the privacy principles or is it seen not as government revenue but rather—

Mr PHILLIPS: No, we would see that as government revenue. What exemption are you referring to?

Mr JONATHAN O'DEA: When enforcing the debt if you want to find out where the person lives there is no difference between ambulance debt and the recovery of a speeding fine, but there is a difference between both those situations and a private sector debt?

Mr PHILLIPS: I am not sure that I really understand the point you are getting at.

Mr JONATHAN O'DEA: It has been said time and again today that one of the problems with recovering debts, if not the biggest problem, throughout the whole process is identifying where debtors live. The privacy legislation prevents any private sector creditor from trying to source that information from a third party. That same frustration does not necessarily exist for you because you can go to Roads and Maritime Services and ask them: Where does this person live? You have an exemption because you are pursuing public sector revenue.

Mr PHILLIPS: That is true but we have that power for fines recovery and for tax recovery but when we outsource to a private debt collector the information we provide to them cannot be used by them for any other purpose, for their other activities.

Mr JONATHAN O'DEA: But they can use it to recover that public sector debt?

Mr PHILLIPS: Only our debt, yes.

Mr JONATHAN O'DEA: So the observation I make is that there is an elevation of public sector debt over private sector debt ostensibly because of public interest in that the money is coming to the public. It is not about protection of the information per se—not trusting a private sector commercial agent versus a government overseeing entity.

Mr PHILLIPS: I understand what you are getting at now. There would have to be a decision made about the extent to which we would be able to use other sources for that private sector debt. The private debt collectors, for example, are able to get information from the credit reference agencies when they do debt recovery. So presumably we would be able to do the same thing for this private sector debt but it would not necessarily mean that we would be able to apply—if a decision is made not to give us the same powers for that private sector debt then it would have to be in the legislation. That is a decision that could be made.

Mr ROBERT FUROLO: The Committee heard evidence earlier today from the Redfern Legal Centre and Legal Aid NSW about the role and value of work and development orders, particularly in fine debt—debts associated with speeding fines and other government debts. Have you got any observations or insights into the effectiveness of the work and development order scheme? Have you got any suggestions or comments?

Mr PHILLIPS: I have certainly got a comment. The work and development order program is probably one of the better changes we have had in recent years. I have got some statistics. I have to say that these have not been validated by a thorough check but it gives you an idea of how effective they have been. A lot of the attention of OSR in fines recovery is concentrated on people who do not have the capacity to pay. We try to deal with these people using instalment arrangements, Centrelink instalments through Centrepay. The work and development orders have allowed us to provide relief to a large number of people who simply cannot afford to pay, not just because of financial hardship but because of drug and alcohol problems, health problems. Since

2009-10 we have had more than 20,000 work and development orders approved, 10,000 in the last financial year—year to date in fact. Not all of them succeeded but a majority have resulted in fines being dealt with.

Mr ROBERT FUROLO: Would you say that they also play a role in helping people to avoid future infringements?

Mr PHILLIPS: I think just the involvement with the community probably does that, but I have no statistics to support that. I know that with community service orders—I forget the person responsible—but I know a report indicates that it certainly has a public benefit. I think work and development orders have the same effect in getting people connected with non-profit community organisations that can help them. We had a recent case where one of the prisons has organised—we get details of people who are in prison so that we do not take enforcement action for at least three months after they are released and as part of that process we provide information to prisoners. In a recent visit 60 prisoners signed up for dealing with their fines after their release through work and development orders. Not all of them are going to be approved and the program involves drug and alcohol rehabilitation but it has the capacity to help people reconnect and develop a social conscience.

Mr ROBERT FUROLO: Has anyone tried to quantify the value of social capital or the value of the work that work and development orders have delivered?

Mr PHILLIPS: Not for work and development orders but there is a report on community service orders from about two or three years ago. That report analysed community service orders and found a significant public benefit which exceeded the administration costs of running the program. I have that report at work somewhere and I can refer you to it.

CHAIR: What is the efficiency ratio of the OSR in collecting debt as a percentage of every dollar outstanding in fines?

Mr PHILLIPS: It is not something that I keep in my head but I have it here.

CHAIR: The cost of recovery?

Mr PHILLIPS: It is part of our key performance indicators. For the cost to collect $100 in tax our target was 53 cents, year to date it is 49 cents per $100. For the cost to administer $100 in fines the target is $13.12, year to date it is $9.37 per $100.

CHAIR: Thank you for your attendance at this hearing today. The Committee may wish to send you some additional questions in writing, the replies to which would form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions the Committee might have?

Mr PHILLIPS: Yes.

CHAIR: The Committee has resolved that answers to questions taken on notice and additional questions are required within 21 days of the questions being sent to you by the Committee secretariat. Do you understand that?

Mr PHILLIPS: Yes.

(The witness withdrew)

The Committee adjourned at 4.27 p.m.