

Legislative Assembly
Legal Affairs Committee
Inquiry into Debt Recovery in NSW



**Submission by the Public Service Association
of NSW**

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1. The effectiveness of current legislation and administrative arrangements

a. Debt Collection as a function of the Sheriff's Office

The Office of the Sheriff has played a curial role in the administration of the New South Wales justice system for over 190 years. The Office was established by the *Third Charter of Justice* 1823, pursuant to *The New South Wales Act 1823* (4 Geo. IV c. 96) an Act of British Parliament. This same Act established the Legislative Council for the colony of New South Wales and the Supreme Court of New South Wales.

Historically, the Office of the Sheriff exercised duties for the court following decrees and orders of the Supreme Court, such as carrying out death sentences and minor sentences passed by court, acting as coroner and running gaols.

Currently there are three main functions performed by the Office of the Sheriff on behalf of the Supreme Court, The District Court and The Local court:

- ensuring the security of courts,
- administering the jury system (in conjunction with other court staff), and
- the service, execution and enforcement of court orders as well as writs and fines issued by the Courts.

The *Crimes Act 1900* (NSW) establishes Sheriff Officers as law enforcement officers of the State of NSW. The authority and powers of Sheriffs are further defined by the Sheriff Act 2005. This legal framework underpins two essential aspects of the debt collection function:

- **Neutrality:** Sheriff Officers serve the court rather than individual litigants. This status is vital in the context of debt recovery which in the interests and legal rights of both debtors and creditors must to be upheld.
- **Protection:** In a similar fashion to the protections afforded to police offices, specific penalties apply to person assaulting or intimidating Sheriff Officers and/or hindering or obstructing their work.

b. Balance between public interest and revenue collection

The fee structure applicable to debt collection activities is intended to strike a balance between the right to “access to justice” for all litigants and the collection of revenue to support the funding of operation.

The Civil Procedure Regulation NSW 2005 regulates the fees for service and enforcement of process. The fee is subject to change on 1 July each year. The fee covers an attempt by the Sheriff to serve documents or seize property at a particular address. If the creditor requires that the Sheriff attempt to seize property or serve a summons at a further address or at the same address on a further occasion the creditor will be required to pay a further fee. If the Sheriff is successful in seizing goods owned by the judgment debtor, the creditor will be required to pay additional administrative costs associated with the removal of goods, advertising costs and the sale of property. The Sheriff will normally require a creditor to pay administrative costs of \$50 within seven days after goods have been seized, and may also require a deposit to cover other costs associated with special removals. If the Sheriff proceeds to sell property owned by the judgment debtor the Sheriff is entitled to recover 3% of the proceeds of the sale. Any costs or fees paid by the creditor, to the Sheriff's Office, are added to the amount of the judgment debt.

Sheriff Officers have confidentially reported to the PSA that the current revenue collected through fees is unlikely to represent the full amount permissible if the regulated fee structure was adhered to in all instances. Members report that actions such as the reissuing for creditor reports and additional charges for removal activities exceeding two hours are often not billed for.

2. Any barriers to the debt recovery process, and impacts on third parties responding to debt recovery actions

a. Job losses crippling debt recovery operations

The effectiveness of current enforcement arrangements are seriously hampered by ongoing job losses as a result of funding cuts, and a reluctance on behalf of the Department to replace Officers lost through natural attrition.

Sheriff Officers report to the PSA that since 2005 the number of Sheriff Officers available to perform enforcement functions on behalf of the court has diminished by between 36 – 45%. Member report that in 2005 there were 346 Sheriff Officers, however, currently there are as few 190-220 Officers. Further to this, Association understands that the 2014/15 Budget allocation to the Office of the Sheriff will be reduced by \$2 million.

Officers further report to the PSA that within the Department the enforcement component of Officer's work is given the lowest priority of all duties. Court security is the highest priority, pursuant to the *Court Security Act 2005* (NSW). While giving priority to court security is not an issue *per se*, the reality in the context of chronic understaffing is that the enforcement function of the Sheriff's Office has become severely neglected.

For a number of years the PSA has directly sought from management that recruitment be undertaken to restore the resources available for debt collection work. Sheriff Officers in 2013 identified 82 known vacancies as a result of hiring inaction. Such was the acute shortage of Sheriff Officers that PSA members voted to impose a range of work bans in an attempt to demonstrate their frustration. The hiring of 12 permanent Sheriff Officers as a result of these actions was the first time recruitment had not occurred since 2008.

This link between short staffing and the current problems in the debt recovery process is confirmed by the legal community. The Law Society of NSW has voiced its concerns with regard to current arrangements to the former NSW Attorney General, the Honourable Greg Smith SC MP. In a letter dated 20 March 2014 the Law Society highlights the grave short comings of the current enforcement functions. The Law Society recommends more funding be provided to the Sheriff's Office to ensure adequate staffing resources are available in order for it to fulfil its statutory obligation.

In its correspondence to the Attorney General, the Law Society states that solicitors had experienced "significant delays of many months before the Sheriff's Office made any attempt to enforce their clients' writs. In some cases the delays would appear to amount to non-performance of this function."

To exacerbate this situation, solicitors were unable to contact the Sheriff's Office. Often telephone calls to the Sheriff's Office's go unanswered and it is impossible to leave a voicemail message as the message service is full. Similarly faxes and e-mails have not received responses and solicitors have visited the Sheriff's Office to find it unattended. Correspondence to solicitors from the Sheriff has indicated that there is a significant build of court processes which have been left unactioned.

The result, the Law Society states is that litigants often abandon the pursuit of the enforcement of a judgement. The Law Society describes this situation as an “effective absence” of enforcement and the only option available for litigants is bankruptcy or the winding up of proceedings, either of which cannot happen quickly and is commonly not financially feasible.

Further to the impact on the delivery of services, the reduction in resources is cause for concern in health and safety Sheriff’s Officers. Sheriff Officers report to the PSA that contrary to WHS standards, they are often working alone while performing their enforcement or security functions.

Staffing deficiencies and a lack of recruitment has meant that there are significant barriers to the debt recovery process. The onus is on the Government to address staff shortages and thereby ensure that the statutory obligations of the Sheriff’s Office are met.

3. Possible measures to make the debt recovery process more efficient;

a. Appropriate funding and staffing are essential to the debt recovery process

A review of the fee structure has not been conducted since 2005 when the Government commissioned Hawkless Consulting Pty Ltd. to report on the enforcement function of the Office of the Sheriff. The study recommended that the fee structure charged by the Sheriff’s Office be revised. A fee of \$115.57 (adjusted by 4% p/a) is recommended to be charged to perform a writ of execution. Had this recommended fee and indexation been adopted as recommended by the report, the current fee would be \$164.49. This is lower than the corresponding fee charged by the Sheriff in Victoria (\$171.50).

The report projected that the adoption of such a fee would provide additional funding of \$4,350,681 per year and recommended that these proceed be used to fund the recruitment of Sheriff Officer’s. This recommendation was made in the context of the redirection of resources away from enforcement activities towards court security pursuant to the passing of the *Court Security Act 2005* (NSW).

The report also reviewed trials of private debt collecting agencies undertaking the enforcement function and found that private providers ended up costing the Government more.

A review of other matters needs to be considered. This includes:

- That the 3% levy cannot be recovered when payments are made direct to the creditor, even after a call has been made.
- Costs of removal of seized goods have not been adjusted for more than 15 years

Finally, the Association is concerned that enforcement training is not being updated and delivered on a regular basis. There has been no training conducted since 2008. This is despite the fact that training packages have been developed in 2008/09 by qualified and experienced Officers for delivery to Sheriff Officers. Attempts to have training implemented are hindered by the continued decrease in Sheriff Numbers.

4. Practice in debt recovery in other jurisdictions

a. Rogue bailiffs in the UK

Experience in other jurisdictions where debt collection has been out-sourced to the private sector has proved ineffective and highly problematic. These examples highlight the fact that debt collection should remain a public service provided by certified law enforcement officers. Sheriff Officers exercise their duties as agents of the court, acting in the public interest. By contrast private debt collecting agents work on behalf of the creditor.

In particular, the problems with private agents in the United Kingdom have become well documented. Engaged to collect unpaid council tax on behalf of local authorities, debt collectors are notorious for their brutal tactics against vulnerable people. In one instance a pregnant woman had her door kicked in and claims to have been struck on the leg and hip over an unpaid £58 debt.ⁱ

The Citizens Advice Bureau, an organisation assisting disadvantaged people in debt, reports that of the 63,000 complaints received in relation to bailiffs, 9 out of 10 were in relation to private contract bailiffs. Complaints related to these “rogue bailiffs” increased by 38% in the five years to 2012, a period in which the use of private bailiffs has increased. The Bureau’s assessment of 400 cases in which private bailiffs were used, found that in almost 78% of the cases bailiff action caused “stress and anxiety” and in 35% it “exacerbated their mental or physical health problems”. Further to this, on average the use of private bailiff fees increase people’s debts by 36%.ⁱⁱ

The professionalism of Sheriff Officer’s stands in contrast to the experience in UK. Sheriff Officers report to the PSA incidents in which they are required to protect often vulnerable evictees from creditors seeking to reposed property in excess of that permitted by the court order.

It is in the interest of the public, and paramount to the integrity of the court and the rule of law that debt collection remains a public service. NSW Sheriff’s Officers are fully sworn, law enforcement officers who carry out orders of the court. Their work is essential to a fair and equitable justice system of NSW immune from the private interests of debt collection agencies.

5. Any other relevant matters

a. An essential public function

The PSA implores the Committee to recognise the essential public service provided by The Office of the NSW Sheriff. Sheriff Officers directly employed by the State as agents of the court are best positioned to fairly and professionally facilitate the debt collection process within the NSW justice system. Any move to outsource debt collection will face problems caused by the competing interests of private providers seeking to minimise costs and maximise profits within a system intended to ensure an accessible and just process to debt reclaiming.

The PSA strongly encourages the Committee to commit to funding adequate staffing levels in the Sheriff’s Office, such that an appropriate balance between the public interest and the individual contribution and benefit of litigants is able to be struck. Ultimately we ask the Committee to accept that a quality and fair justice system cannot be outsourced.

ⁱ <http://www.independent.co.uk/news/uk/home-news/councils-resort-to-rogue-bailiffs-to-terrify-debtors-charities-warn-8219108.html>

ⁱⁱ http://www.citizensadvice.org.uk/index/pressoffice/press_index/press_20130127-2.htm