

Report
Full investigation - *Ombudsman Act 1972*

Complainant	The Ombudsman Ombudsman 'own initiative' investigation, section 13(2) <i>Ombudsman Act 1972</i>
Agency	Courts Administration Authority (CAA)
Ombudsman reference	2013/00788
Date complaint received	22 January 2013
Issues	Whether it was reasonable for the CAA to make a Fines Enforcement Suspension order

Jurisdiction

I received a complaint from the husband of a woman (herein referred to as 'Ms W') regarding the circumstances that had led to the suspension of Ms W's driver's licence for a specified period.

The complainant did not require Ms W's particular situation to be investigated because an application had been lodged with the Magistrates Court to have the matter reviewed. He wished, however, to have 'poor processes' recognised and 'prevent others from going through the same mess'. He asked me to investigate instead the circumstances that led to the imposing of the licence suspension.

The CAA has submitted that in light of the review provisions under the *Expiation of Offences Act 1996* and the *Criminal Law (Sentencing) Act 1988*, I should consider not proceeding with the investigation under section 13(3) of the Ombudsman Act. That section provides that I must not investigate any administrative act where the complainant had a remedy by way of legal proceedings, unless it is not reasonable to expect the complainant to exercise that remedy.

In this case, the complaint arose from an automated fines recovery process whereby a sanction was imposed in circumstances where its imposition was avoidable. Further, there is a significant public interest in ensuring that the fines collection system operates efficiently and fairly.

I decided to commence an 'own initiative' investigation under section 13(2) of the Ombudsman Act.

Investigation

My investigation involved:

- assessing the information provided by the original complainant
- meeting with CAA staff to discuss the relevant fines enforcement procedures

- seeking a response from the CAA and the Electoral Commission of South Australia (**the Electoral Commission**)
- considering the *Electoral Act 1985*, Expiation of Offences Act, Criminal Law (Sentencing) Act, *Motor Vehicles Act 1959* and the *Statutes Amendment (Fines Enforcement and Recovery) Bill 2013*
- providing the CAA with my provisional report for comment, and considering its response
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Responses to my provisional report

In response to my provisional report, the CAA provided a detailed response. I have included that response in its entirety:

I refer to your correspondence dated 31 May 2013 and the enclosed Provisional Report regarding your own initiative investigation of fines collection, which includes reference to a previous complaint (Ms W).

Further to my previous correspondence, I now provide the following further submissions and information for your consideration.

Pecuniary Penalty Enforcement Regime - Review and Appeal Provisions

Your Provisional Report indicates that the current investigation has been commenced pursuant to s13(2) of the Ombudsman Act, 1972.

Further, I note that s13(3) of the Ombudsman Act, 1972 provides:

“(3) The Ombudsman must not investigate any administrative act where –

- a) the complainant is provided in relation to that administrative act with a right of appeal, reference or review to a court, tribunal, person or body under any enactment or by virtue of her Majesty's prerogative; or*
- b) the complainant had a remedy by way of legal proceedings; unless the Ombudsman is of the opinion that it is not reasonable, in the circumstances of the case, to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy.”*

The “Background” section of your Provisional Report contains legislative analysis of the pecuniary penalty enforcement regime, which is generally agreed. In addition to the information contained in that section, the relevant legislation also provides for a number of

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR449 at 449-450 per Mason CJ, Brennan, Deane and Gaudron JJ.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

review and appeal provisions at various stages of the enforcement process for outstanding debts. In particular:

- *Section 14 of the Expiation of Offences Act, 1996 (Expiation Act) provides for the Court to review an enforcement order made pursuant to s13 of that Act. No fee is imposed for making of an application under s14 and ordinarily no appearance before the Court is required. I note that this avenue of review was invoked by Ms W on becoming aware of the enforcement orders made in relation to her unpaid expiation fee.*

- *Part 9 Subdivision 7 of the Sentencing Act provides for rights of review and appeal in relation to penalty enforcement orders made pursuant to Subdivision 3 of that Part, namely:*
 - *Section 70M allows a person the subject of a penalty enforcement order made by an authorised officer to apply to a Registrar for a review of the decision to make the order;*
 - *Section 70N provides for appeal to the Court against a penalty enforcement order by a Registrar or a Registrar's decision on review pursuant to s70M.*

No fee is imposed for making of an application under ss70M or 70N.

The above provisions provide an expedient and effective legal remedy by way of review and appeal in relation to enforcement orders and pecuniary enforcement orders. In those circumstances, it is suggested that the above legal avenues provide rights of appeal and review falling within s13(3) of the Ombudsman Act, such that further investigation is not warranted.

Circumstances of Making of Fines Enforcement Suspension Order

In relation to the broader issue of whether making of the Fines Enforcement Suspension (FES) order concerning Ms W, or in other circumstances, was reasonable, I make the following submissions in response to your provisional views, comments and foreshadowed recommendations.

- Ms W

In relation to Ms W, Section 32A(1) of the Electoral Act, 1985 (Electoral Act) relevantly provides as follows:

“32A—Notification of transfer within the same subdivision

- 1) An elector whose principal place of residence changes from one address to another within the same subdivision must, within 21 days of the change, notify an electoral registrar of the address of the elector's current principal place of residence.*
- 2) An elector who fails, without proper excuse, to give a notification under this section is guilty of an offence.*

Maximum penalty: \$75”

Section 32A required Ms W to notify an electoral registrar of her change of address. Had Ms W complied with to [sic] s32A of the Electoral Act, all relevant notices would have been sent to Ms W's new address and subsequent enforcement proceedings may, or may not, have eventuated. Given the provision of s32A of the Electoral Act, it is submitted that the Electoral Commission and the Fines Payment Unit (FPU) were entitled to rely on the information contained in the electoral roll as to Ms W's principal place of residence.

At all times, the FPU acted in accordance with the relevant legislation and relied upon contact information provided by the Electoral Commission in accordance with the electoral roll. The information on the electoral roll was incorrect as the result of Ms W's non-compliance with s32A of the Electoral Act, which constitutes an offence. In addition, the legal remedies outlined above are available to a debtor. In those circumstances, it is the CAA's submission that the FPU acted appropriately and reasonably in making the FES order in this matter.

- Fines Enforcement Suspensions

As at 1 June 2013, a total of 673,419 penalties totalling \$284,160,187 were under management by the Fines Payment Unit (FPU). As acknowledged in your Provisional Report, the FPU unit faces a formidable challenge in endeavouring to collect and enforce outstanding debt, given the propensity of some debtors to avoid responsibility.

I advised in my previous response dated 1 March 2013, that the FPU processed 131,078 enforcement orders and issued in excess of 85,000 Cessation of Business (COB) and 41,000 FES orders in the last financial year.

I am advised that the majority of these enforcement matters were lodged by issuing authorities, including SAPol and Local Councils.

I am further advised that a high percentage of these matters concerned motor vehicle and parking offences, in relation to which SAPol and Councils had previously undertaken searches of the TRUMPS database to obtain details of registered owners before issuing expiation and reminder notices. This practice suggests that address details in these matters are sufficiently current when Certificate of Enforcement proceedings are initially lodged with the Registrars of Magistrates Court and the Youth Court for further mandated action.

In these circumstances it is respectfully suggested your foreshadowed recommendation

“...that the CAA should check the TRUMPS database, together with any other source of debtor information available to it, before taking any enforcement proceedings”

is unnecessary for the majority of enforcement matters and would result in excessive fines recovery delays.

As you have acknowledged, there is no interface between the TRUMPS and CrimCase applications. Manual searches involve logging in and out of the TRUMPS database independently for each enquiry. The FPU is not resourced or funded to conduct this level of database checking for every matter.

I note point 15 of your Provisional Report regarding searching of the TRUMPS database and, in particular, the indication that:

“[t]here is no statutory requirement for the Electoral Commission to make such an enquiry, and I am advised that consequently a practice has developed that issuing authorities look to the CAA to assume responsibility for locating debtors”.

Since establishment of the FPU, no resources have been provided to the CAA to meet the expectation of conducting TRUMPS searches in the first instance, for each enforcement proceeding lodged (131,078 matters in 2011-2012). It is the view of the CAA that it is the responsibility of issuing authorities to arrange access to the TRUMPS database or any other relevant sources of information and to provide the FPU with current address details before lodging unpaid expiation notices for enforcement under the Expiation Act. I understand that, on passage of the Statutes Amendment (Fines Enforcement and Recovery) Bill, 2013, it is intended to introduce a fee for lodgement of unpaid expiable debts by some issuing authorities in order to reinforce the necessity for issuing authorities to ensure the quality of information provided in relation to outstanding debts referred for enforcement.

In relation to the second part of your foreshadowed recommendation that:

“...when presented with evidence that a debtor may not be at the recorded address, the CAA should consider whether it is appropriate to make a Fines Enforcement Suspension order”

I advise as follows.

The CAA's legacy CrimCase system was engineered to reflect the government's fine recovery intentions under s69(2) of the Sentencing Act, which prioritises the issue of FES and COB orders. The system provides for the automated issue of these orders if there is no response to an FPU reminder notice or it is returned unclaimed.

I am advised that this procedure was introduced to address reticent fine defaulters who simply ignore or return mailed processes marked "not at address", when in fact they are still living at that address. COB orders were designed to bring outstanding fines to debtors' attention when transactions were attempted with the Motor Registration Division (MRD). This includes fine debtors who are required by law to advise the MRD of address changes but have failed to do so. Of course, a TRUMPS database check would fail to ascertain any new information in these circumstances.

As outlined above, the abovementioned procedure is supported by s14 of the Expiation Act, which was introduced to specifically provide fine defaulters with a redress mechanism by way of review of issued expiation notices and enforcement orders, as occurred with Ms W. In addition, as outlined above, other legislative remedies are available pursuant to ss70M and 70N of the Sentencing Act.

As you note in your Provisional Report, the Government has recently introduced to Parliament the Statutes Amendment (Fines Enforcement and Recovery) Bill, 2013, which creates a new central entity to manage fines enforcement. An "Improving Fines Collection and Enforcement" project team has been established within the Attorney-General's Department (AGD) to implement the changes detailed in the Bill. The CAA has also established a project team for the transitioning of the fines functions to the proposed Fines Enforcement and Recovery Unit in the AGD. As you would appreciate, the legislation and subsequent business rules are yet to be finalised.

As part of the consultation process, the CAA has recommended to the AGD project team that issuing authorities be responsible for undertaking TRUMPS database checks before lodging expiation notice enforcement proceedings which, if implemented, would address the primary concerns you have raised.

The CAA has not explored the cost of CrimCase system changes that would be needed to meet the requirements of your foreshadowed recommendations. However, given the potential cost, resource and possible operational inefficiency implications of implementing the recommendations you have foreshadowed, together with the further information provided in this response, you may wish to forward your Provisional Report to the AGD for consideration and submissions before making a final decision.

Should you require any further information, please do not hesitate to contact me.

*Yours faithfully
Gary Thompson
State Courts Administrator*

I have some sympathy for the role of the CAA in attempting to recover a significant debt from a host of debtors, many of whom seek to avoid detection. I have given consideration to everything the CAA has conveyed in preparing this report.

Background

The pecuniary penalty enforcement regime

1. Pecuniary penalties can be imposed directly by the courts or through the expiation of offences under the Expiation of Offences Act. In this matter the Electoral Commission posted an expiation notice to Ms W alleging that she had breached the Electoral Act. It alleged that on 4 June 2012, she failed to complete a form attached to a notice sent to a person who did not vote at an election. An expiation fee³ of \$10 is prescribed for this offence.

³ Section 85(7) *Electoral Act 1985*.

2. When she did not respond, the Electoral Commission sent a reminder notice. At this time, a reminder notice fee was added to the debt. Ms W did not respond to the reminder notice, so the matter was referred to the CAA for enforcement.⁴
3. Ms W was not aware of the action taken against her because the Electoral Commission and the CAA had sent the notices to her old address. However, she had previously advised the Registrar of Motor Vehicles of her current address.⁵
4. The CAA can exercise a range of enforcement powers to obtain payment of a debt. Although the Criminal Law (Sentencing) Act enables the sale of property and the garnisheeing of money in relation to more serious debtors,⁶ the CAA's usual approach includes the issuing of Fines Enforcement Suspension (FES) and or Cessation of Business (COB) orders. The former suspends the operation of the person's driver's licence, and the latter prohibits the person from conducting a range of transactions, e.g. vehicle registration, with the Registrar of Motor Vehicles.
5. I acknowledge the significant sums of money owed by debtors to the state and the need for effective mechanisms to recover these sums efficiently. The CAA has informed my investigation that at 1 June 2013, fines totalling \$284 160 187 were being managed by the CAA.⁷
6. The CAA has informed my investigation that in 2011-2012 it processed 131 078 enforcement orders, issuing more than 85 000 COB orders and 41 000 FES orders.⁸ On the available evidence the average return rate on enforcement notices issued by the CAA is 13 per cent.
7. Division 3 of the Criminal Law (Sentencing) Act enables the CAA to take a range of measures to recover outstanding fines and costs from debtors. Relevant provisions for the purposes of my investigation are as follows:

61—Pecuniary sum is payable within 28 days

A pecuniary sum imposed by order of a court is payable within 28 days from (and including) the day on which the order was made.

...

65—Reminder notice

- (1) If, at the end of the 28 day period from the making of an order imposing a pecuniary sum, the debtor has not paid the pecuniary sum or entered into an arrangement under this Subdivision in respect of the sum, an authorised officer must cause a reminder notice to be sent by post to the debtor.
- (2) A reminder notice must—
 - (a) be in a form approved by the Minister; and
 - (b) contain information as to the enforcement action that can be taken against the debtor in the event of continued default.
- (3) Subject to subsection (4), a prescribed reminder notice fee will be added to and form part of the amount in respect of which the notice is issued.
- (4) An authorised officer may, in such circumstances as the officer thinks just, waive payment of a reminder notice fee.

⁴ Section 13 of the *Expiation of Offences Act 1996* refers to 'the Registrar' of a court but for the purpose of this report I will use the acronym for the Courts Administration Authority (CAA).

⁵ I was informed by the Licence Regulation Manager, Department of Planning, Transport and Infrastructure that the Registrar of Motor Vehicles transacted a change of address for Ms W on 10 January 2011. The address was changed from Salisbury Plain to an address at Salisbury Park.

⁶ Section 60(1) of the *Criminal Law (Sentencing) Act 1988* defines a 'debtor' to be a 'person by whom a pecuniary sum is payable'.

⁷ Letter from the State Courts Administrator dated 17 June 2013.

⁸ Letter from the State Courts Administrator dated 1 March 2013.

...

69—Time at which enforcement action can be taken

(1) If—

- (a) a debtor has not, within 14 days of (and including) the date on which a reminder notice relating to a pecuniary sum was given, paid the sum or entered into an arrangement under Subdivision 1 in respect of the sum; or
- (b) an arrangement under Subdivision 1 has terminated and the debtor has not entered into any further such arrangement in respect of the pecuniary sum,

an authorised officer may make such penalty enforcement order or orders in relation to the debtor as appear likely to result in full or substantial satisfaction of the due amount.

(2) However—

- (a) priority should, in the first instance, be given to an order for suspension of a driver's licence or for a restriction on transacting business with the Registrar of Motor Vehicles, or both; and
- (b) in deciding at any time whether to make an order for sale of property or a garnishee order, priority should be given to the former; and
- (c) an order for sale of property, a garnishee order or community service order cannot be made while a penalty enforcement order for suspension of the debtor's driver's licence is in force.

...

70C—Costs of penalty enforcement orders

The prescribed fees for issuing, serving and executing a penalty enforcement order are added to and form part of the amount in respect of which the order was made.

...

70E—Suspension of driver's licence

- (1) An authorised officer may make an order suspending a debtor's driver's licence for a period of 60 days (and such an order may be made despite the fact that the debtor is currently disqualified from holding or obtaining a licence).
- (3) The authorised officer will—
 - (a) cause a copy of an order under this section to be served on the debtor personally or by post; and
 - (b) notify the Registrar of Motor Vehicles of the order.
- (4) An order under this section takes effect 21 days from (and including) the day on which the order was made.
- (5) A person must not drive a motor vehicle on a road while his or her licence is suspended under this section.

Maximum penalty:

- (a) \$2 500; or
- (b) disqualification from holding or obtaining a driver's licence for a period not exceeding 6 months; or
- (c) cancellation of the person's driver's licence and disqualification from obtaining such a licence for a period not exceeding 6 months.

70F—Restriction on transacting business with the Registrar of Motor Vehicles

- (1) An authorised officer may make an order restricting a debtor from transacting any business with the Registrar of Motor Vehicles.

- (2) The authorised officer will—
 - (a) cause a copy of an order under this section to be served on the debtor personally or by post; and
 - (b) notify the Registrar of Motor Vehicles of the order.
- (3) An order under this section—
 - (a) takes effect on the Registrar of Motor Vehicles being notified under subsection (2); and
 - (b) continues in operation until cancelled.
- (4) The effect of an order under this section is that, while the order is in operation, the Registrar of Motor Vehicles will not process any application made by or on behalf of the debtor, whether the application was made before or after the order took effect.
- (5) However, subsection (4) does not apply in relation to an application—
 - (a) to transfer the registration of a motor vehicle of which the debtor is a registered owner; or
 - (b) to renew the registration of a motor vehicle of which the debtor is a joint registered owner.

8. Section 91 of the Motor Vehicles Act articulates the effect of an order of suspension including the penalty for driving while suspended as follows:

91—Effect of suspension and disqualification

- (1) This section and section 93 apply to suspensions and disqualifications imposed under this or any other Act.
- (2) While a licence or learner's permit is suspended it has no force or effect.
- (3) Subject to section 81B(4), while a person is disqualified from holding and obtaining a licence or learner's permit, any licence or learner's permit held or obtained by that person has no force or effect.
- (4) The Registrar must not issue a licence or learner's permit to any person who is so disqualified.
- (5) A person must not drive a motor vehicle on a road while his or her licence or learner's permit is suspended or while disqualified in this State or another State or Territory of the Commonwealth from holding or obtaining a licence or learner's permit.

Maximum penalty:

For a first offence—imprisonment for 6 months.

For a subsequent offence—imprisonment for 2 years.
- (6) Subsection (5) does not apply to a person driving a motor vehicle on a road in accordance with an unconditional licence to which the disqualification does not apply in accordance with section 81B(4).

Whether it was reasonable for the CAA to make a Fines Enforcement Suspension order

9. The Electoral Commission posted the expiation notice to Ms W at an address at Salisbury Plain, as this was her recorded address on the electoral roll. It transpired that she did not receive the notice because she had moved to a new address in Salisbury Park. At that time, the Electoral Commission was not aware of the new address.
10. I have been informed that the Electoral Commission has not updated the electoral roll, as Ms W has not informed it of her change of address.⁹ The Electoral Commission relies solely on the address recorded on the electoral roll, and does not make any additional enquiries to establish a person's whereabouts.
11. Because the offence was not expiated by the due date the matter was referred to the CAA for enforcement. This process requires the Electoral Commission to provide the CAA with a certificate (in the prescribed form).¹⁰ The certificate included Ms W's old Salisbury Plain address as her recorded address.
12. In many cases offences attracting expiation notices involve the use of a motor vehicle. In these cases, issuing authorities search the TRUMPS database, which is managed by the Registrar of Motor Vehicles, to ascertain addresses. There is a search fee applied but this fee is recoverable from the debtor. Currently no fee is imposed for lodging an enforcement certificate with the CAA.¹¹
13. The CAA received the certificate on 28 September 2012. In accordance with its usual practice, the CAA assumed that the issuing authority had conducted all reasonable checks to ascertain the whereabouts of the debtor.
14. The CAA has submitted that it and the Electoral Commission were entitled to rely on the information contained on the electoral roll. Section 32A of the Electoral Act requires an elector to notify the electoral registrar of a change of address. In relation to other matters the CAA has submitted that it should rely on the debtor's address provided by the issuing authority as a relatively recent TRUMPS search was conducted. In my view this may be appropriate at the time of referring a matter to the CAA for enforcement, but it should not be relied on when taking action subsequently, particularly if other information is available suggesting the debtor may not be at the nominated address.
15. In this case, Ms W advised the Registrar of her new address on 10 January 2011. The Electoral Commission referred the expiation notice to the CAA for enforcement on 28 September 2012. Therefore, had a search of the TRUMPS database been done by the Electoral Commission, Ms W's change of address would have been identified. There is no statutory requirement for the Electoral Commission to make such an enquiry, and I am advised that consequently a practice has developed that issuing authorities look to the CAA to assume responsibility for locating debtors.
16. Under section 13(2) of the Expiation of Offences Act, the CAA can make an order for the enforcement of the debt. As required by section 13(6), the CAA forwarded a Notice of Enforcement to Ms W at the old Salisbury Plain address. The CAA's usual practice is to post the notice, although the section does provide for it to be given personally to the debtor. The primary purpose for providing the notice is to inform the debtor that the CAA is now responsible for recovering the debt and that additional fees have been added.

⁹ Email from the Electoral Commission dated 25 March 2013 and confirmed by telephone on 16 July 2013.

¹⁰ Regulation 9 of the Expiation of Offences Regulations 1996.

¹¹ My investigation has been informed that a lodgement fee will be imposed once the *Statutes Amendment (Fines Enforcement and Recovery) Bill 2013* is enacted.

17. I note that the Notice of Enforcement was issued some 21 months after the Registrar of Motor Vehicles updated the TRUMPS database with the new address for Ms W.
18. Ms W did not respond to this notice, so the CAA sent a reminder notice to the same address on 27 October 2012. This added more fees to the debt. The notice was returned unclaimed to the CAA on 14 November 2012. This was effectively the fourth attempt by the respective agencies to contact Ms W in an endeavour to have her expiate the offence, but none of these attempts sought to locate her at the new address that was recorded on TRUMPS.
19. As the amount remained outstanding on 27 November 2012, section 69 of the Criminal Law (Sentencing) Act enabled the CAA to take further enforcement action.
20. The language of section 69 allows an authorised officer to exercise a discretion when contemplating enforcement action. This requires a decision to be made in respect of each debtor to determine the appropriate enforcement action to achieve payment of the amount due, thereby achieving the intent of the section. I acknowledge the sheer number of debtors involved but enforcement action only becomes effective when the debtor is aware of it and is affected by it.
21. The FES and COB orders were sent to the debtor at the old address at Salisbury Plain. The notices were returned to the CAA unclaimed. Nevertheless after 21 days¹² the 60 day licence suspension became effective.
22. Section 70E of the Criminal Law (Sentencing) Act gives an authorised officer a discretion to make an order suspending a driver's licence (i.e. a FES). As a sanction, a licence suspension can have serious implications for the licence holder. Unlike a COB order which becomes an issue only when the person wishes to transact business with the Registrar of Motor Vehicles, a FES can have a near immediate effect on the subject licensee. In my view, it follows that a FES should only be imposed when it is appropriate.
23. On 14 January 2013, Ms W contacted the CAA, presumably because she became aware of the action taken against her. She subsequently lodged a Form 51 applying for a review of the enforcement order under the provisions of section 14 of the Expiation of Offences Act. Consequently the FES and COB orders were cancelled.
24. On 16 January 2013 Ms W contacted the Electoral Commission and provided a valid reason for not voting. On 18 January 2013 the Electoral Commission contacted the CAA and requested that the enforcement order be withdrawn. The total amount owed at this time was \$504.
25. In summary, the CAA acted on information provided by the Electoral Commission in identifying Ms W and her place of residence. The CAA issued the necessary notices in a timely manner, but despite the last notice being returned to the CAA unclaimed, it did not do a check of TRUMPS. Consequently, it issued enforcement orders and sent them to Ms W at her old address.
26. The CAA has submitted that it complied with the relevant legislation. I accept this but in carrying out the letter of the law the CAA must also have regard to its intent. In my view it would not have been parliament's intention to impose a sanction for the non-payment of a debt if the debtor was unaware of it, and the sanction had no punitive effect.

¹² Section 70E(4) of the *Criminal Law (Sentencing) Act 1988*

Opinion

In light of the above, I consider that the CAA in making the Fines Enforcement Suspension order acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the CAA should ensure that the fines enforcement regime:

- undertakes all reasonable checks to determine the whereabouts of the debtor immediately before referring a matter for enforcement
- in deciding whether to make a Fines Enforcement Suspension order, an authorised officer should take all reasonable steps to ensure that the debtor is residing at the recorded address.

Ombudsman comment

I acknowledge the formidable challenge presented to the CAA, given the propensity of some debtors to avoid responsibility for their debts. However, not all debtors would fall into this category, as their failure to respond to notices may simply be due to the fact that the notices have gone to an old address.

I am informed that the CAA is able to conduct only manual searches to ascertain the current whereabouts of debtors. The CAA has direct access¹³ to the TRUMPS database, but the CrimCase system used by the CAA cannot conduct automated searches. This therefore means that the process of debtor tracking can be slow, labour intensive and dependent on available resources to conduct searches. The CAA has commented that it has not been given additional resources to conduct manual searches of TRUMPS. Further, while debts remain outstanding awaiting manual follow-up, the CrimCase system continues to generate FES notices irrespective of whether the whereabouts of the debtors are known.

I have commented in an earlier investigation¹⁴ about the inadequacies of the CrimCase system. As a legacy system, it is limited in its functionality having regard to the myriad of transactions the CAA must conduct. However, in my view the current approach to tracking debtors is anachronistic. Any attempt to improve the rate of recovery from debtors should include mechanisms that enable fast tracking of debtor movements so that timely and effective enforcement action can be taken.

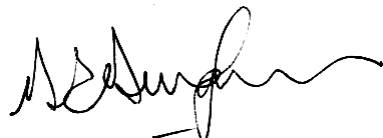
I note that following the passing of the Statutes Amendment (Fines Enforcement and Recovery) Bill by the parliament, the government will be establishing a separate business unit to manage the enforcement of pecuniary debts. As part of the transitioning process from the CAA to the new unit, the CAA should include the recommendations contained in this report.

¹³ My investigation has been advised that information sourced from overnight arrests by police can on occasions produce a current address. Other government databases containing personal information have been utilised but the success rate has been low or the search costs too high to justify them being used as a regular source. - Meeting with CAA staff on 20 May 2013.

¹⁴ Investigation into the Courts Administration Authority and the Department of Planning, Transport and Infrastructure - Delayed disqualification notices - July 2012.

Final comment

In accordance with section 25(4) of the Ombudsman Act, I request that the CAA report to me by 29 November 2013 on what steps have been taken to give effect to my recommendations above; and, if no such steps have been taken, the reason(s) for the inaction.

A handwritten signature in black ink, appearing to read 'Richard Bingham', with a long, sweeping horizontal stroke at the end.

Richard Bingham
SA OMBUDSMAN

14 August 2013