



**Paul Cook &
Associates**

16 June 2017

DIRECTORS:
Paul Cook FCA
Brett Harrison BEc
Johnathan Murrell CPA

Fair Entitlements Guarantee

By Email: Improving FEG@employment.gov.au

Dear Sir/Madam

I support the ARITA FEG submission.

I enclose my submission to The Treasury concerning ASIC Supervisory Cost Recovery Levy Regulations 2017.

I believe the points made in this submission are equally relevant to the FEG consultation paper.

Yours faithfully

Paul Cook

Registered Company Liquidator



26 May 2017

DIRECTORS:
Paul Cook FCA
Brett Harrison BEc
Johnathan Murrell CPA

The Treasury
Langton Crescent
PARKES ACT 2600

By Email: asicfunding@treasury.gov.au

Dear Sir/Madam

ASIC Supervisory Cost Recovery Levy Regulations 2017

I refer to my previous submission and advise I support the ARITA submission dated 25 May 2017. I would make the following additional points.

What is NOT recognised by Treasury, ASIC and my colleagues is that the introduction of the PPSA has substantially increased the number of secured creditors in all administrations. It may not be appreciated by a large proportion of PMSI ROT creditors that they now have a general security. The effect of this is that secured creditors are only required to contribute reasonable costs to the external administration for work done on the realisation of the asset.

They are NOT required to contribute to the costs of the general liquidation work. This must be met by the individual Insolvency Practitioner.

In addition to this free work we are required to contribute an unreasonable amount to pay for our supervision.

The only way an Insolvency Practitioner can fund the general liquidation work is by the recovery of preferential payments. This requires a significant outlay of speculative professional services with limited return in an overall sense.

The current FEG submission is that any of these monies recovered should go to reimburse FEG (see attached 8.2 note 59) ie NO funds to Liquidators for the general liquidation work. Therefore even the received funds may not be available for general liquidation work.

I have been a practitioner in a regional area for over 30 years. This levy will have a devastating effect on my business.

Section 545 of the Corporations Act states that:

“545(1) [**Expenses not to be incurred**] Subject to this section, a liquidator is not liable to incur any expense in relation to the winding up of a company unless there is sufficient available property....

(3) [**Lodgement expenses**] Nothing in this section is taken to relieve a liquidator of any obligation to lodge a document (including a report) with ASIC under any provision of this Act by reason only that he or she would be required to incur expenses in order to perform that obligation.”

The reality is that in recent times ASIC has been promoting the position that the minimum requirement to comply with 545(3) is quite extensive.

This is simply unjust. A Liquidator is required to expend funds for the benefit of the Commonwealth in the form of ASIC on unjust terms. ASIC obtains information which can be used for civil penalties. The Liquidator in the main receives NO compensation for the investigations to produce the Section 533 report. ASIC will state that the Liquidator can apply to the Assetless Administration Fund. However there is no cost recovery for the application or the investigations carried out earlier.

It may seem trite and self serving but the reality is a Liquidator is NOT entitled to be paid for general liquidation work ahead of the secured creditor.

The PPSA legislation enables a trade creditor to include terms of trade that include a general security without the express signature of the chargor. It is now rare for an administration not to have a number of secured creditors. When the creditor community fully understands their rights I envisage a fundamental change in our sector. The result I believe will be a greater concentration to the big practices which substantially obtain work from the Banking sector.

I have not seen any work by Treasury or ASIC on who should pay for the general liquidation work. I would be most concerned if this issue is NOT focused on by the government.

In summary, the Liquidator is being unfairly charged in order to maintain a licence.

I am happy to provide more information to support my contentions.

Yours faithfully



Paul Cook

Registered Company Liquidator