

The Manager
Governance and Insolvency Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES WCT 2600

28th July 2011

Re: A submission on the options paper: a modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia

I have read the options paper and feel very let down by the options paper as it let's ASIC and IPA continue in their roles. It basically tells them that they are doing a great job and keep it up and that is totally wrong. Anyone that believes that anything will change for the better with ASIC and the IPA involved is living in a froufrou paradise. These groups should not be involved in the regulation of the insolvency industry at all as they have had their chance and have failed and continue to fail. They are nothing short of a disgrace. As an investor and Australian tax payer and voter I have to say I have no faith at all in ASIC or the IPA and regard them as nothing more than a joke. Any government that supports these groups will not get my support. I also regard the options paper as a total waste of time and taxpayers money as the Senate had done all the work and produced a final report that I supported fully.

The Insolvency Practitioners' Association (IPA)

The facts on how the IPA treat complaints, I will never deal with the IPA again as I think they are the most unprofessional and rude industry body in Australia.

- I wrote to the IPA about my concerns about a insolvency on the 24th September 2009, I finally received a reply on the 19th June 2010, that is nearly 9 months to resolve the matter, and they did not resolve it anyway they just backed up their member, 9 months to resolve a complaint is nothing but a joke and tells me that the IPA really don't care less about complaints. This is a fact and I'm happy to supply copies of the letters to confirm the above.
- In regard to another matter, I wrote to the IPA in the same letter on the 24th September 2009, after 7 months the IPA write to me to ask what was my complaint about? What were they doing with my complaint for 7 months? I would say nothing at all. Is that taking a complaint seriously? No way.

Australian Securities and Investments Commission (ASIC)

- From a recent complaint this is what I get from ASIC **"As ASIC is precluded from commenting on operational matters, we are unable to provide further details regarding what, if any, action we may or may not take in relation to the concerns you have raised."** What the? Talk about covering your back side and being non accountable, what a joke.
- Another line from the same letter **"Please note that ASIC will only contact you again in relation to your complaint if we require further information or evidence to assist in our enquires."** So they will not tell me anything more and I will never know what they have done if anything. Please tell me how does this close out

complaints? I think ASIC needs to be told how to handle complaints and taught basic customer service skills. What a bunch of cowboys.

These are not all related to insolvency but are included to illustrate my point about ASIC being useless. These are just a few examples from a long list of failings:

- A Brisbane fraudster who used an elaborate Ponzi scheme to fleece \$15 million from 200 investors was able to operate for 10 months after the Australian Securities and Investments Commission (ASIC) knocked back his application for a financial services licence. Australian Financial Review 6th June 2011
- ASIC called off an investigation into Babcock and Brown Ltd two years before the company's collapse even though concerns had been raised over the investment firm's conduct. Business Spectator 20th July 2010
- ONE-Tel boss to get 13 million dollars in costs from ASIC over another failed court case. The Australian 6th Feb 2010
- ASIC didn't act on ABC Learning Centres complaint, AGE 11 Sept 2008, an old article I found but does show ASIC to not treat complaints with any respect.
- The corporate watchdog in March blocked efforts by a litigation fund to mount a class action aimed at seeking the return of up to \$5 billion in penalty and late fees from banks, Age 14th May 2010

If what I read in an article in the Australian Financial Review dated the 14th April 2010 about that "ASIC are highly selective" about whom it prosecutes, and some practitioners and insolvency firms with a close working relationship with ASIC"are never prosecuted. If that is correct is nothing short of corruption and should be treated like that. ASIC should not have favourites and I think these relationships should be investigated as they stink of corruption.

I would also like to refer the Governance and Insolvency Unit Corporations and Capital Markets Division to my submission to the Senate Inquiry and the reference the inquiry made to my submission in their final report.

If you do anything please tell ASIC to stop saying in their letters "**ASIC values the information we receive from the public, and complaints such as yours assist ASIC in working to build confidence in the integrity of the capital markets.**" As this is just not correct as they don't value the information at all and have been shown by the Senate to not value complaints, this is a FACT.

Yours sincerely,



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complaints area, we then determine which firms we think may have issues which require further surveillance. We narrow down what potentially would be bad apples and may focus more on some of those programs or some of those firms. We select different sized firms— and we understand that processes in perhaps some of the larger firms allow them to have better quality control—and we take that into account and the other issues I have mentioned in determining which firms we surveil.⁸

6.13 Mr Stefan Dopking of ASIC similarly told the committee that ASIC's investigation processes combine an analysis of industry data with the evidence it receives from complaints. He explained:

In selecting the industry, we do have a good selection of data available within our systems that will help us to identify the size and the volume of jobs that a practitioner might have. So, once that reaches a certain level, it tells a certain message. Within each of those jobs we are told the age of the jobs, and documentation is lodged which we can review once we trigger that. We also have complaints that we receive. Through the liaison structure we do have whispers, and so we also have quite extensive experience within our own staff.⁹

6.14 The committee draws attention to the following comments from ASIC's Chairman, Mr Tony D'Aloisio, which seem to indicate the rather passive approach the regulator takes to insolvency matters. In giving an overview of the regulator's work in the insolvency area, the Chairman's first observation emphasised the role of others:

[T]he legislative framework that we working under, like the rest of the Corporations Act, is essentially self executing. Basically it is up to the people who are affected by the laws to comply with them. ASIC's role is oversight and its regulatory functions are set out in the act. Our oversight role in this industry is really complemented by the roles of others, loosely called gatekeepers, to protect creditors.¹⁰

ASIC's unresponsiveness to complaints

6.15 A second criticism of ASIC, and a significant theme of this inquiry, has been the unresponsiveness of the regulator to the complaints it receives about the conduct of a liquidator or administrator. The committee received many submissions noting that their complaint to ASIC about the conduct of an insolvency practitioner was either not answered, answered months later, or simply filed on a database with no subsequent action. The following excerpt, in a submission from Mr Stephen Koci, gives a good sense of this inertia:

...I wrote to ASIC about the above company and the administrator on the 7th May 2009 [and] I wrote again on the 28th May 2009 as I had not heard

8 Mr Michael Dwyer, *Committee Hansard*, 12 March 2010, p. 6.

9 Mr Stefan Dopking, *Committee Hansard*, 12 March 2010, p. 7.

10 Mr Tony D'Aloisio, *Committee Hansard*, 12 March 2010, p. 2.

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anything from ASIC not even receipt of my letter. I then rang ASIC on the 5th June 2009...and ASIC could...find no reference to my letter...then when they rang me back they still could...find no reference to my letter and suggested I fax the letter...

I did and then I got another call from ASIC to state...they actually did have my letter...and that it was being referred to the Melbourne office and would be done urgently. I wrote to ASIC again on the 11th June 2009, 16th June 2009 and on the 25th June 2009, 4th July 2009 and the 23rd July 2009 to state my ongoing anger at ASIC and there [sic] shockingly slow response to this urgent matter...

[F]inally I received a letter dated the 29th July 2009 from Tony D'Aloisio the Chairman of ASIC, that letter took ASIC over 2 months to send from my initial complaint and all it said was basically ASIC was going to take no action and just told me information that I knew and was on the public record. Basically...ASIC just brushed my concerns away and while they took their time the administrator was destroying the company.¹¹

6.16 Mr Stephen McNamara, a director of a small law firm acting for directors and guarantors of companies in liquidation, was also critical of ASIC's unresponsiveness. He told the committee that in his experience:

...the only avenue that seems to be available to directors and guarantors et cetera at the moment is to go to ASIC. But ASIC is generally too slow and does not get on top of the problem quickly enough. As I said, these people have usually been seriously affected, their lives are under serious stress and they need something to happen quickly—and that just does not occur.¹²

6.17 Mr Duncan Ross expressed similar frustration at ASIC's lack of system and response to his complaint. He explained in his submission that in late 2008, he lodged a complaint with ASIC about an insolvency practitioner and, having heard nothing 'for some weeks', contacted ASIC by phone. ASIC advised that Mr Ross' complaint had been 'lost in the system' and asked him to relodge it.¹³

6.18 Mr Ross then provided ASIC with several documents relating to his complaint but was advised that the regulator would not act any further. ASIC gave no reasons why it would not investigate. Mr Ross elaborated:

General comments from speaking with a number of ASIC staff over a period of some months gave me the impression that they were very selective about choosing their battles. This appears to me to be more about taking public scalps rather than enforcing the law.¹⁴

6.19 Mr Doherty described his experience with ASIC as follows:

11 Mr Steven Koci, *Submission 85*, pp. 2–3

12 Mr Stephen McNamara, *Committee Hansard*, 9 April 2010, p. 36.

13 Mr Duncan Ross, *Submission 41*, p. 2.

14 Mr Duncan Ross, *Submission 41*, p. 3.