

30 July 2010

Regulatory Burdens Review
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
By email to regulatoryburdens@pc.gov.au

Annual Review of Regulatory Burdens on Business: Business and Consumer Services – Draft Research Report June 2010

We have read chapter 4.5 of this draft report – *insolvency practitioners* – and agree with its contents, both as to its accuracy in relation to insolvency law and practice, and its draft recommendation.

We make these additional comments. The draft report refers [p 147-148] to the government's response to the 2004 PJC Report which supported the PJC Report's recommendation 'in principle' and said that '*there are arrangements in place for securing cost savings and streamlining the administration of corporate and personal insolvency law. ... ITSA and ASIC have entered into a Memorandum of Understanding. ... and will continue to consult in the development of insolvency/bankruptcy policy*'.

It is not clear to us what arrangements are in place for securing cost savings etc or indeed what outcomes have resulted. Also, while the ASIC-ITSA Memorandum of Understanding is not a public document, ASIC did announce at the time that it was limited to regulatory issues; that is, facilitating '*joint ASIC-ITSA investigations where a director of an insolvent company is also a bankrupt, and where Corporations Act and Bankruptcy Act offences are suspected [and ASIC and ITSA taking] a cooperative approach to overseeing the conduct of liquidators and bankruptcy trustees*'. The draft report goes on to say that ITSA and ASIC '*will continue to consult in the development of insolvency/bankruptcy policy*'; however as your report correctly says [pp 146-147], corporate insolvency and bankruptcy *policy* is the preserve of Treasury and Attorney-Generals' respectively, not ASIC and ITSA.

A task force review is a good approach. As a suggestion, it would be able to initially scope the issues for attention, and provide some guiding principles and areas for focus for future law changes being introduced. This would seek to ensure that as new legislation or regulations in personal or corporate insolvency are being drafted, attention would be given to the alignment that we suggest is needed.

We suggest that the task force membership also comprise those from the professions, and academia.



As to a joint insolvency regulator, we think that it is, as the draft report says in its draft recommendation 4.4, an issue that should at least be examined. It is an issue that has been raised before the Senate Committee to which we referred. The Committee is yet to give its report. It is aware of this draft research report of the Commission. If the Senate Committee issues its report soon, the IPA may like the opportunity to raise with the Commission that or other issues relevant to this review.

Please note these minor suggested changes in the draft report:

- Page 146 - 'the *Cross-border Insolvency Act 2007*~~8~~';
- Footnote 10 - 'the Accounting Professional and Ethical Standards Board's professional standard covering Insolvency Services – APES 330 Insolvency Services'.

The IPA is pleased to have been able to contribute to this report. Should you wish to discuss our views, please contact me.

Yours sincerely

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