

Parliamentary Joint Committee
On Corporations and Financial Services Inquiry
The impairment of customer loans.
Inquiry into Bankwest / CBA

Response to ARITA submission 38 by Sean Butler
19th August 2015

I am writing this in response to Submission 38 to this committee by John Winter the Chief Executive officer of the Australian Restructuring Insolvency & Turnaround Association (ARITA).

In his submission he makes a number of claims that are not correct in an attempt to say that all is well with insolvency practitioners. Nothing could be further from the truth.

He argues that it is unnecessary for a lender to artificially devalue an asset in the absence of a monetary default and to put any loan in distress.

I know from first-hand experience that this is exactly what Bankwest did and that is outlined in my earlier submission to this inquiry. The reason being simple... that Bankwest could then gouge and asset strip the company for its own benefit... My profitable company is now owned by one of the Bankers involved... no coincidence.

The Receivers in our case had no interest whatsoever in the wellbeing of our company, to the contrary they were inexperienced, corrupt and charged over \$110,000 a month just to do my job and in the end destroyed the company. It is now four years later, the receivers have retired, I have discovered funds have been embezzled and the Receiver.

has still not handed back our records. This is illegal and ARITA is aware of this fact.

John Winter Argues that under section 420A the receiver has to ensure the best price is received for an asset. In our case an offer of \$13.3m was rejected and an offer of \$9.5m accepted. One interested party was told not to bother putting an offer in. This is all documented and I can provide evidence if required.

I request that I be allowed to appear in person at this Inquiry and to provide undisputable proof that the Receivership Industry is corrupt and that ARITA are useless as a regulator and it seems compliant in dishonesty in that they know about it but refuse to act.

I would like to specifically address some issues raised in the submission 38 by ARIRA:

1) About ARITA Page 3:

"ARITA's mission is to support insolvency and recovery professionals in their quest to restore the economic value of underperforming businesses..."

In our case the Receivers destroyed value and had no interest whatsoever on restoring value. Details of these facts are covered in my earlier submission to this inquiry. Please read.

"We....uphold world class ethical and professional standards"

Then why can't they get the receiver in our case to release documents he is legally bound to release and why did they not investigate this when first requested to do so?

2) Item 1.1 page 3:

"ARITA is not aware of any practices as described in paragraphs (a) and (c) of the terms of reference"

We have advised ARITA and previously the Insolvency Practitioners Association IPA of practices as described in paragraphs (a), being constructive default, and (c) punitive clauses. In fact they were given links to copy of my submission to the 2012 Senate Inquiry explaining in detail such issues (see email below dated September 6 2012 **Annexure H**)

3) Item 1.3 page 6

"We consider that, generally, the profession properly attends to its requirements under the law"

In our case the receiver is without doubt acting outside the law by amongst other things withholding documents. ARITA was made fully aware of this yet informed us that it would not investigate See **Annexure D** their letter 31 July 2015.

It was only with and several emails including **Annexure C** and subsequent phone calls stressing that this would be brought before this parliamentary Inquiry did we receive a letter from ARITA dated 6th August 2015 **Annexure B** indicating that they would now investigate. We are yet to hear from them again. When I receive their response I would like to make it available to this inquiry.

Section 420A (Receiver must get best price) *"We are not aware of any issues about the high standards it imposes"*

They are fully aware of dishonest conduct by the receiver in breach of this law in our case and until now have not acted. (refer to Annexure C item 7 in my earlier submission to this inquiry.)

"They are officers of the company and are therefore subject to the significant duties of care and diligence, good faith and other duties under the act"

Several previous government inquiries have raised serious concerns about corruption in this industry and ARITA are fully aware of that.

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"They must report any misconduct or breaches of the law"

What a joke... they are accountable to no one as my case and numerous others show.

Just ask why they are withholding my documents or why they got us to sign a Deed against our will just so we could have money to feed our children. is a white collar criminal

and should be in jail. He is in breach of the law now holding documents and he hasn't reported it!!

4) Item 1.4 Financial System Inquiry Report (e)

"Recommendation 36 that the government consult further on possible amendments to the external administration regime"

Clearly there are serious issues here as raised in this and SEVERAL previous inquiries. The receivership industry is clearly corrupt and needs to be cleaned up.

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"If in the course of this inquiry submissions are made that indicate concern about practitioners we would like the opportunity to consider those and to respond"

I have made a formal complaint to ARITA about serious misconduct by _____ of _____
This is also dealt with in this and my earlier submission to this inquiry. I will send a copy of both submissions to both ARITA and to _____ in the hope that they will now investigate my case in an open and transparent manner and would welcome to report to this parliamentary inquiry any outcome.

To show just how useless ARITA is as any form of regulator I provide a summary of my dealings with them below. I have provided annexures as evidence and highlighted some important bits in red.

The bottom line is that ARITA are aware of serious misconduct by one of their members going on for several years but have until now failed to act.

Summary of our dealings with ARITA:

In August 2012 we took a complaint the Insolvency Practitioners Association, IPA (now renamed ARITA) regarding the conduct of Receiver _____
and probably as a result of adverse publicity in a number of cases including this one) for failing to adequately discharge his duties in relation to the sale of the company's assets.

The IPA refused to investigate this complaint arguing there were legal reasons why it couldn't. The Legal reasons they argued were as I explained in documents attached disputable and in any event only covered some aspects of our complaint. There was no legal reason why they couldn't investigate the much broader and far more serious issues raised however they refused to investigate.

As proof I attach in below correspondence to and from IPA covering these matters.

Annexures F & G (important bits now highlighted in red).

_____ was retired as receiver in March and August 2013 and has to date failed to account for his actions or to return to us our companies books and records to which we are legally entitled. His conduct in withholding this information is illegal.

I have complained on numerous times to Bankwest senior managers and to FTI Consulting about this and have requested the return of the documents. _____ has to date not returned the documents.

In July 2015 in the lead up to this Parliamentary Inquiry I again wrote to ARITA requesting they re-open my case including getting _____ to release my documents.

Annexure E

On 31 July I received a letter from ARITA saying they would not investigate my case.

Annexure D

On 3 August I wrote back with giving reasons (again) why there was no reason they couldn't investigate. (there were two other emails and several phone calls as well)

Annexure C

On 6 August I got a letter from John Winter the National Secretary of ARITA saying that they would now investigate only certain matters of my complaint but also saying that *"a Receiver Manager has no obligation to report to a company director in relation to the conduct of the Receivership"*

In other words they are largely unregulated and can do and charge whatever they want!

Annexure B

6 August I wrote again requesting they investigate and act on the fact that records are being illegally withheld

Annexure A

To date I have not heard back from them and the documents have not been returned.

This inquiry will find serious misconduct within the Financial Services Industry as many other inquiries have done. The terms of reference included. the role of insolvency practitioners

I request that I be allowed to appear in person at the inquiry to prove to you that corruption is involved in my case. I request that the Bankwest manager responsible for my case, and
the receiver in our case also be called so the committee can see their side.

This government has had a Royal Commission into the Construction industry. The misconduct within the Banking and Insolvency Practitioners industry is more extensive and involves more money than what's involved in the Construction industry. In my case alone \$575,000 has been embezzled from just one account. People go to jail and lose their jobs for less!!

If the conclusion is that there has been a cover-up of dishonesty and unconscionable conduct then a Royal Commission needs to be called. The cost of the royal commission could be covered by fines to the banks involved if found guilty (which they would be) so the cost to the government for cleaning up this industry would be nil.

Attached

Annexures A, B, C, D, E, F, G,H

Only provided as proof of above, a bit long... only read if you want proof. ☺

Important bits highlighted in red.

Please contact me if you want any further information on this case or to discuss.

Kind Regards,

Sean Butler
Perth