Submission to the economics committee inquiry into the role of liquidators administrators and ASIC 18/12/09

The following submission is put on behalf of my wife, **Barbara Ann Wright** and I **Richard B. Wright**.

We live in the Upper Hunter district of NSW at:

(...)

This submission is compiled from material evidence to support the points made with more documentation available if it is deemed necessary. The following matters illustrate systemic failures in the accountability and transparency of those administering corporate law and its governance.

1. Receiver.
2. Liquidator
3. ASIC

. In this case, the appointment of the receiver was never acknowledged or signed by the directors of the Company because of the obvious error at the time of the appointment. This was later proven in a Court of law. The methodology adopted by the financier involved providing restricted information to the receiver who had limited knowledge of "the business". By way of example the receiver had no knowledge of the production of livestock and took the decision that a highly fertile cattle herd should be sold at a meat value. Agents engaged by the receiver saw nothing but the commission plus some professional fees to provide valuations based on the wrong market information. On analysis agents receive more commission for two relatively low sale prices than one sale at a price accurately reflecting real value. The short-term opportunity this sacrificial sale offered was more attractive than any possible long-term implications that they thought might arise. The fundamental belief was that because the receiver had been appointed they could get commission and professional fees on a business they perceived was doomed.

Escape mechanisms limiting liability to a restricted figure allows the receivers and administrators to sacrifice assets with impunity and, in a competitive sense seek bigger and better clients for the bank that had them appointed. Their instructions from financiers are to retrieve the maximum amount of money from the perceived failed business as soon as possible. If this does not succeed the next strategy is to procrastinate and abuse the legal system with delays and failure to discover documents crucial to a fair outcome. These delays offer no down side to banks because they allow the interest to accrue regardless. The separation of the bank account with that of the receiver may occur depending on whether the bank wishes to destroy the business and "construct" debt, or not.

The strategy adopted by the financial institutions in compiling deeds and agreements often signed under duress when times get tough, has been described as unconscionable conduct by legal advice particularly when clauses such as "in good faith" are incorporated without clear definition of what that means. Solicitors acting for both the bank and its appointed receiver (often one and the same) have the comfort of diminishing the value of the business further by charging exorbitant fees all of which are debited to the company in receivership.

The Banking Code of Practice, stemming from a joint statutory committee in October 2000 was voluntary and therefore impotent. It has done little or nothing to redress the problems that that inquiry exposed. ASIC has a specific role mentioned in the code of practice in regards to dispute resolution process. They were requested to organise such a process but refused. It was established that the senior "customer advocate" for ANZ was an ex ASIC employee. The "arrangements" that are agreed upon between ASIC, liquidators, receivers and administrators with a joint and several approach, appear to do their job, but in reality are not transparent or accountable for their statutory responsibility as their documentation shows. Statutory protection creates the opportunity for representatives of these organisations to blame others but take no responsibility themselves.

In an earlier submission to the Joint Parliamentary Committee on Corporations and Financial Services (JPCCF November 2009) some of the matters mentioned in this document were raised but confined to the particular terms of reference of that hearing. It appeared that the outcome has failed once again to sheet the blame to where it belonged and the big banks came out unscathed. This particular matter remains a blight on the NSW Supreme Court, the Court of Appeal and the Parliament itself, if legislation is not administered or interpreted in accordance with the law. Unless an estoppel is applied when errors are detected until the matter is completely settled or resolved the system is neither accountable nor transparent. The problem that laymen face in seeking resolution is that interest and penalty interest is applied to the loan facility based on a false premise. This spurious practice is at arms length from the receiver or administrator but runs on regardless of the legality or appropriateness of the appointment. Chain of responsibility legislation is of no consequence until proven to be effective in case law.

The following summary provides a living example of what now appears to be common practice, it is supported by documentation on every point made, is underpinned by case law established in the NSW Supreme Court (1999). It is not subject to the Statute of limitations because it remains outstanding and is yet to be resolved.

1.The Receiver

This submission is supported by a NSW Supreme Court action, which in essence established that *a receiver had failed in his duty of care to sell assets for not less than their fair market price*. Sect 420A (1) (a) of the Corporations Law was proven to have been breached. This case was never settled with the bank and was furthermore quantified as an error of $1,065,000 by the receiver in a transaction of approximately $3,000,000. The Judge in his wisdom left the opportunity open for the "bank" to be subjected to a supplementary judgement. The citation of the case is **Jeogla v ANZ (1999) NSWSC 563.** The judge in his wisdom concluded that "*judgement may require to be delivered dealing with questions relating to the Bank".* Legislation specific to the chain of responsibility indicates they could well be the instrument responsible for what is now seen a gross miscarriage of justice. Justice is a right but in this case court orders were ignored while the bank continued to run up accounts including that of the receiver's appeal while simultaneously issuing intimidatory documents to my wife and I, who were the controlling shareholders of the targetted Company.

The receiver appointed was (...) r of (...)
The case was subject to an appeal by the bank's appointed receiver (Skinner) and that appeal failed. The citation of the appeal was **Skinner v Jeogla CA 40517199.** Delays of twenty months ensured the bank received interest and penalty interest at the same time funding the litigation using the Company's (Jeogla Pty Ltd) account. On the one hand the bank appointed the receiver and maintained he was independent and professional but bank statements issued showed the bank funded his appeal thus ensuring the insolvency of the company Jeogla Pty Ltd. This in itself made for a business vulnerable and ripe for the bank to pick and direct to a larger corporate account.

The case is unique in that the above mentioned litigation was successful against both the bank and the receiver however they have refused to acknowledge the judgement or negotiate any settlement. Chain of responsibility legislation in light of the judgement suggests the bank is responsible for wrongfully appointing the receiver. The bank would maintain he is independent of them. They were more intent on intimidation and harassment than mediation including threats of bankruptcy based on false statements.

A question remains unanswered in that the extent of the error was of such magnitude that the receiver should not have been appointed in the first place and it appears the courts were presented with false and misleading statements in order for him to be appointed.

Valuations, which separate the business from the land, when one enterprise cannot operate without the other is a spurious practice designed to produce false impressions to suit the bank's predatory practice to replace an undesirable client. Agriculture was neither understood nor attractive and this scenario provided an opportunity to procure what appears to be a larger and therefore more lucrative client. The business destroyed in this case involved valuable stud animals and commercial trade stock. No consideration was made for superior genetics or the fertility of the herd. In general terms, livestock are regarded as saleable *at current market value*. By way of explanation, if a cow produces a calf every year she has an intrinsic value ten times that of the current market value realised in the year of sale. Another anomaly arises when valuable stud animals are used in the context of semen sales or embryo transplants. It is fundamentally wrong to suggest that a $50,000 bull in its prime could be sold at a meat value of 90c per kilogram. The business includes many components necessary to run it successfully. To sever the components of the business into unmarketable portions makes the "business" non-viable. Put simply "the business was mainly cattle, without land they could not exist.

Countless letters seeking the whereabouts of missing assets were written to the receiver covering the same issues ASIC could not account for and a substantial file is available for investigation similar to that of ASIC.

As a director of the Company I, **Richard B. Wright** demanded bank statements to which I am legally entitled, that until well after the above mentioned court case I had been denied. There was no correlation between the Reports as to Affairs and the bank statements. On receipt of the bank statements, no adjustment for the above-mentioned judgement was evident and a further $500.000.00 had been expended on the business to pay for the receiver's appeal. The bank practice is to continue to charge interest and penalty interest on accounts that are in the hands of the receiver, written off as far as the tax department is concerned, beyond the control of the directors, and produced to provide evidence to the courts for bankruptcy purposes. There is no reconciliation

between ATO and ASIC, the stamp duties office. None are accountable or transparent.
At no stage could we ascertain our level of indebtedness (if any) because the bank would not communicate, but rather directed us to the receiver, who was in "control". We were advised at a later date that the bank statements sent to us were the wrong ones. We requested a copy of the correct statements but that request was denied because the Company was *in the hands of the receiver*. With respect, the distribution of false and misleading statements is a breach of criminal law. It is apparent that banks, rather than correcting any errors, have an advantage, of advising clients that such errors should be corrected by litigation only. They are aware that the litigation will be paid for by the client, (in this case our Company) who has to extend exposure, and borrow to service any legal action anyway. In the knowledge of the proven case against the receiver my wife and I personally funded the Company case against the receiver.

2 ASIC

I monitored the *reports as to the affairs* (RATA) of the company with the Australian Securities and Investments Commission (ASIC). This is the body that claims to be **the consumer protection regulator**. The RATA showed no reference to any adjustment for the result of the above mentioned Judgement ($1,065,000). The RATA showed no receipt for a list of assets as yet unsold or regarded as a "given" in the fire-sale conducted by the receiver in the first instance and afterwards the administrator of the Company. Correspondence from ASIC states "*the judgement error was not sufficiently egregious enough to warrant further action*". It was later established that ASIC were not advised of the above mentioned judgment figure at all. At a later date ASIC were provided with details of the judgement showing the amount of the error.

The receiver was written to on no less than ten occasions seeking receipt documentation for the following assets;

1. A registered Hereford Stud
   These cattle were the direct descendants of the first Hereford cattle to arrive on the mainland of Australia in 1827. They were an integral component of a larger commercial herd and used as a filter to ensure inferior genetic material did not infiltrate what was regarded as one of the highest quality herds in the country. A letter from the Hereford Society apologised for the illegitimate destruction of this important herd at the hands of a receiver who was totally ignorant of the national significance of this asset and unaware of the history behind it. The Society has changed its constitution as a result of the court case to incorporate the necessity to inform all directors of companies that may be subject to a "firesale" procedure regularly adopted by financiers and their associates in their haste to sell down a business. These cattle were sacrificed at a fraction of their value and butchered.

2. A registered Horse stud These horses were among the first to be registered with the Australian Stock Horse Society, the body responsible for the custodianship of the records associated with these famous stock. Originating from the Waler these horses were not only significant from a historical perspective but they were bred along lines to ensure the men who rode them knew they were on good stock with a consequence they would enjoy their work and do a good job. 32 registered horses were sold at a "doggers" value. No stallions were itemised, no yearlings or mares

were identified and the Australian Stock horse society advised that they have altered their constitution to ensure that directors would be notified and have to sign off before any such sacrificial sale took place in the future.

3. The intellectual property of the business (TM no.795107)
The Company sacrificed had over 150 years of continuous involvement with the cattle industry, which according to Corporations Law is of no consequence. It was deemed necessary to take out a Trade Mark as a protective strategy however the Trade Marks Office decided, that due to the sale already consummated at the hands of the receiver the office of Trade Marks issued another one exactly the same. The purchasers of the land and cattle paid nothing for this important component of the business and no contracts mention it. The incompetent receiver was of the belief he had "sold the business". Consider the consequence of the allocation of two "Coca-Cola" brands. The Trademark was supported by a logo associated with the livestock identification brand "V1V" This is a derivative of the first registered brand in Australia which was also held in the family "V2V". The trademark covered both livestock and meat and was designed to control a quality label for sale at all points of the marketing chain from the paddock to the consumer's plate. The allocation of two identical trademarks makes both useless. The buyer, the (...) group are a large corporate with a predatory approach to pursuing business opportunities. The relationship with the receiver was clarified by a solicitor along with the receiver at a trade mark hearing held in Sydney
4 The business as a wholeThis business was the first in the cattle industry to adopt "Cattlecare" a National quality assurance system developed by the Cattle Council of Australia. The system was based on a formula used by NASA to check off on safe space travel procedures. The directors of the Company went further and became the first cattle enterprise in Australia to apply International Standards Organisation (I SO) quality assurance. The company had a live stock export licence. It led initiatives in marketing pioneering interface live auction systems whereby stock could be sold on-line via computer simultaneously with a physical sale conducted on the property. On property research in conjunction with CSIRO and Departments of Agriculture led the industry in oestrus control, trace element deficiency correction in cattle, pasture improvement trials were all part of the operation. The receiver and his associates regarded none of these issues as of any consequence. I t appears the purchaser of "the business", a large corporate, was dealing with the receiver direct in achieving massive discounts and favours in return for a quick transaction. This was later illustrated when the receiver appeared at a trademark hearing where he appeared on behalf of the purchaser.

4. Plant and Equipment and personal items
The premise, that the party interested in the purchase of plant and equipment and personal items can be dealt with without consultation with the real owner, because it is convenient is wrong. Fair market price can only be achieved by exposing these items to a public auction. The key element of the judgement relative to the cattle was that the receiver "*failed to take all reasonable care to sell this aspect (sic cattle) of the business for not less than market value*". This is now case law so the question remains unanswered as to why other items were not sold in a similar manner.

5. Accumulated tax losses
   This aspect of the business was totally ignored. The Company had nurtured and developed run down and neglected property over some one hundred years and four generations. These losses allowed prudent expenditure to expand and improve 100's of thousands of acres to the highest recognised International standard. Following a request of the Australian Tax Office (ATO) for an audit they advised the matter was "*in the secrecy department*" and therefore unavailable. It would appear that the similarity of the original name Jeogla Pty Ltd and that of the buyer's trade name "Jeogla Pastoral" could well disguise and include this valuable asset and be passed over as a given.
6. Cows with calves at foot
   Quite apart from the aforementioned Stud cattle, the company had a reputation in the industry for highly fertile females, some of which were sold at annual production sales. The herd was continually "classed" with those cows proven to be empty on a pregnancy test automatically culled. The receiver took no account of this aspect of the business and used the council"saleyards" as the market indicator. This venue is normally the clearinghouse for product which cannot be dispensed with otherwise and achieves the lowest common denominator. This strategy returned an estimated 10% of the real value of the cattle. Both fertility and superior genetics were totally ignored in the receiver's haste to sell down the assets. Obviously a cow with a calf at foot as well as one in utero is a three for one unit and far more valuable than the meat price he adopted. A stud bull can produce semen to twenty times the value of the bull. The bulls were sold as meat.
7. Rent flow from real estate investments
   The business incorporated off-farm investments with a view to alleviating the difficulty often arising from agricultural pursuits through seasonal variation, fire flood or drought. The Company invested in real estate mainly in Armidale to guarantee continuity of cash flow regardless of season. The receiver in his haste to sell down these assets overlooked and ignored the cash flow from these entities, delaying Reports as to Affairs to ASIC purposefully. He also ensured ASIC were not made aware of the directors in common with the real estate who also directors of the rural properties.
8. The property unsold and unencumbered (without any mortgage attached) as part of the property known as Bald Hills
   This part of the property was totally ignored by the receiver and not discovered until the liquidator checked off on portion numbers of the property purchased by the (...) (the buyer). The receiver decided to overlook this item and despite receiving in excess of ten letters asking about such matters he ignored this piece of land. There was no encumbrance on this property but he decided because it was "land-locked" it was of no value to any one but the buyer and costs of searches were such that he could not be bothered. The liquidator (...) was advised at a meeting conducted in his office in May 2004 along with the Bank (ANZ) representative, they had an obligation were in association with a professional who was in breach of the law. (...) had had a responsibility to report to ASC suspected offences, the misapplication of property, negligence, default, breach of duty or breach of trust. They were advised of all the above misdemeanours including court proceedings, missing assets, fire sales the false and misleading bank statements RATA but ignored their statutory responsibility.

9. The costs orders as handed down by the NSW Supreme Court (50129/98)

The judgement quantified an error of such magnitude on one aspect of the business only (the cattle) that it became obvious the receiver should never have been appointed. The value the judge arrived at still took no account of the fertility and superior genetics of the herd, semen rights to bulls, history, reputation or intellectual property. The figure he arrived at was an error of $1,065,000 and the judges perception of the value of the cattle was $3m. This constitutes an error of approximately 30% and was accepted by all those involved in the sacrificial firesale many of whom received commission and professional fees. This figure does not appear on any bank statements demanded by the directors after the judgement. It dose not appear on any RATA and correspondence from the receiver continually refers to his "control" and as a director I had no right to ask questions or interfere in his actions. The bank statements show expenditure of more than $500,000 above any of the previous five years and appear to contain expenditure on the receiver's failed appeal. Massive expenditure on drought fodder was seen to be wasted on the property during the period of the receiver's control. This was a year when no such expenditure was necessary.

10. The costs orders as handed down by the NSW Court of Appeal(40517/99

The receiver using the same solicitor as that of the bank appealed against the aforementioned judgment. Costs orders were ignored by the receiver and do not appear as an adjustment to any perceived debt. The mathematics show continuous ignorance of the ongoing productive capacity of the business and the use of historical erroneous figures to satisfy "accountancy procedures" that are fundamentally flawed. To sell a cattle herd without consideration of its productive capacity is akin to selling a car without a motor.

The ASIC was also written to asking for the record of the relative sales of all of the above.

The administrator was similarly requested to account for assets that were sold, not sold, or as yet to be sold. When the receiver was proven to have breached the law it was obviously untenable for him to continue to be involved with the case so an administrator (...) was appointed to dispense with what he believed to be residual assets. He automatically aligned himself with the ANZ and the receiver by stating. "*I do not have sufficient books and records of the Companies in my possession to determine the underlying cause of the financial difficulties which would have led the ANZ to ultimately take steps to realise its security."* It would be conjecture to suggest such a statement is a cover-up or some money may have changed hands but the fact remains the bank has never settled the matter. The collusion, which exists, once a receiver has been appointed, with solicitors in common extracting "professional" fees from the company account is on our records. Similarly the administrator becomes involved and avoids transparency by quoting the above. In the meantime the bank will draw up extortionary documentation all designed to intimidate the original client. The bank's reaction is to advise the administrator that they cannot discuss what they regard as the client's private business. If it is the case that ASIC accept statements from receivers who are on the record of breaching the law then it is condoning misappropriation. ASIC were requested to consider their undertaking to provide an independent mediation with ANZ as outlined in the Australian Banking Code of Practice (clause 36). I did not receive any reply to this

request and in this process it was discovered Mr Robinson, the ANZ customer advocate, had been previously employed by ASIC. Again it would appear some agreement was reached to cover-up.
A substantial file of correspondence both to and from ASIC catalogues a plethora of errors, omissions and contradictions by ASIC, all of which are available for investigation. The most demonstrative document advises that errors such as that quantified in the NSW Supreme Court was *not sufficiently egregious enough to warrant further action.* Another letter stated "ASIC's assessment altered due to the judgment of Justice Einstein". Ten days later in another letter we were advised that the alteration in the first letter contained a typographical error. In effect ASIC does not recognise breaches of Corporate Law.
The Institute of Chartered Accountants were provided with all the details of RATAs submitted to ASIC and they directed the matter to their investigative committee. This organisation maintains it is not litigious and would not reprimand one of their members who had breached the law on the basis the "judge may have erred". The judgement was enhanced by the receiver's failed appeal.

3The Liquidators

(...) were appointed liquidators of the business when the receiver had erred. (...) were not briefed at all in relation to court proceedings and were not aware until I had informed them of missing assets and the court judgement as well as the failed appeal. At a meeting conducted at the office of (...) on the 3rd June 2004 I attended as a director of the company (...) . A substantial and valuable block of land (unencumbered) had been overlooked in their haste to sell down the business. The liquidator had also invited a representative of ANZ, who wore dark glasses throughout the proceedings and made no input. The matters for attention were to do with the professional fees of the liquidator and any "missing assets" were of no account. A substantial file exists with reference on numerous occasions to (...) being denied access to the company's books by the receiver. The same list addressed to the ASIC was tabled so (...) could investigate. They identified the block of land and then proceeded to suggest the only interested buyer believed he already owned it as part of the "business" which he believed he had bought. This land has a permanent running stream through it which is a renown trout tributary situated in some of the most picturesque country in the New England. No contracts of sale show the items (including a trade mark) were ever sold or paid for. It appears they were a "given." A substantial file exists which refers to the arrangement between the receiver who had passed on selective documents denying any access to the company's books.

4The agents

LJ Hooker representative (...) within the transcript of the court case stated that he knew this matter would end up in court and had every opportunity to condemn the action of the receiver but chose to receive commission instead.
Elders acted in a similar manner and Justice Einstein described this agent as incompetent and not to be relied upon.
PR Watts acted in conjunction with LJ Hooker valued a few horses receiving a professional fee for doing so and received commission despite overlooking the fact they were registered and pedigreed.

Legislative or regulatory change

It would be irresponsible not to recommend any change to a system, which has delivered a disaster to my family through a stupid error, but sadly such errors can be orchestrated through manipulation of valuations, ignorance and intimidation for a spurious outcome.

1. Regulation of banks to ensure correction of errors made and adequate compensation for damages.
2. When a judgment is handed down an estoppel should apply until such times as the matter is settled to the satisfaction of the Court which administered the case.
3. Appeals should not be able to allow the destruction of a business by way of abuse of the system with purposeful delays, non-discovery of documentation, the use of wrong statements that may be compiled for tax purposes as opposed to real values.
4. Mandatory accountability for errors made through audits between the statutory bodies. ATO, ASIC, APRA Stamp Duties Office etc.
5. Severe penalties for any individual or corporation failing to notify conflicts of interest.
6. Agents returning commission, which has been paid after the courts have proven inappropriate practice adding to the debt of the owner of the business.
7. Publication of breaches of law that have become "case-law" for public benefit.
8. Compensation for proven errors by way of **re-valuation** of the complete business, which has been wrongfully destroyed and adjustment made between before and after sale where litigation has taken place.
9. Legislation established to prohibit the practice of pursuit to bankruptcy before the litigation is settled or deemed to be settled by the courts.
10. Professionals to be struck off, if their advice has led to damage to an extent greater than their public liability insurance cover. Particularly where a breach of Corporation law has been established and proven.
11. Compensation for damages from the action of a statutory authority making an error in respect of the issue of a Trade Mark.
12. Establishment of clear guidelines as to the difference between Criminal law and Corporate law when errors of in excess of $1m are made.
13. No immunity for Directors, controllers liquidators or administrators by way of purposeful bankruptcy to avoid punishment and criminal proceedings become automatic in such an event.
14. If an error has been proven in the courts, not only should it be accounted for, compensation should be mandatory. The receiver was to blame for his incompetence but the bank appointed him. This is where the buck should stop.
15. Receivers, administrators and liquidators should at all times be independent of the financial institution that appoints them. The scheme of arrangement that is in operation at the moment invites the collusion and corruption that has been outlined in this submission.

This submission is small evidence in what is a grave miscarriage of justice. It is put to the committee in good faith in the hope that more detail can be exposed. If the committee agrees to invite me to give evidence at any public hearing that may be considered I would be most willing to oblige.

Yours faithfully

Richard B. Wright

Overveiw/ The business and forced sales.

(...)