



9 November 2018

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir / Madam

Credit and financial services targeted at Australians at risk of financial hardship

Thank you for the opportunity to make a submission in respect of the above inquiry.

This submission is being made by the Australian Restructuring Insolvency and Turnaround Association (ARITA). Information about ARITA is at the end of this submission.

ARITA has been a long-time advocate for the need for regulation of “pre-insolvency advisors” or “untrustworthy advisors”. This can include businesses that promote themselves as “debt management firms”, “debt negotiators”, “debt advisors”. These advisors are also amongst the leading proponents of illegal phoenixing.

When we talk about untrustworthy advisors, we mean unregulated people and businesses which promote that they can assist financially vulnerable people to “fix” their problems. Those who are financially vulnerable can be in this position either due to personal or business circumstances, including as a result of running a business in a corporate structure.

Financially vulnerable people are looking for solutions and this can make them easy targets for unscrupulous, unregulated advisors that seem to be able to offer the “answer” to their difficulties.

Unfortunately, because these advisors are unregulated, they are not bound by law or professional standards and can provide “answers” that a regulated advisor, such as a bankruptcy trustee or registered liquidator, cannot.



These “answers” may result in:

- a person paying for services that cannot be provided (e.g. saying the advisor can prevent a liquidator from pursuing a director for compliance with their statutory obligations, which under Australian laws they cannot),
- paying for a service that they might otherwise obtain for free (e.g. paying for the appointment of a bankruptcy trustee when AFSA will accept a bankruptcy petition for free); or
- result in the person breaching the law (e.g. by encouraging the destruction of books and records or transfer of assets).

The practices of these untrustworthy advisers not only exploit those in financial hardship but also causes greater loss to unwitting creditors (which, in turn, may cause further financial hardship as many of those creditors are likely in micro to small businesses). Employees of the distressed businesses who are assisted by untrustworthy advisers may also be harmed by the loss of their employee entitlements. Untrustworthy advisers also cause whole-of-community harm through lost tax revenue.

It is our position that all persons or businesses providing advice to people or businesses in financial distress should be registered as a bankruptcy trustee, debt agreement administrator or registered liquidator; all of whom are highly trained in insolvency law, registered and regulated by either AFSA or ASIC and are usually members of professional bodies with professional standards and disciplinary processes.

ARITA is available to assist the Committee further if required. To discuss our submission further, please contact Ms Kim Arnold, Policy & Education Director, on [REDACTED]
[REDACTED]

Yours sincerely

John Winter
Chief Executive Officer



About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,400 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 84 percent of registered liquidators and 87 percent of registered trustees are ARITA members. We represent firms of all sizes, from small practice through to multi-national firms, with the majority of our membership being drawn from those in small-medium practice.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We deliver this through the provision of innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2017, ARITA delivered close to 300 professional development sessions to around 5,000 attendees.

The Association promotes best practice and provides a forum for debate on key issues facing the profession. We also engage in thought leadership and public policy advocacy underpinned by our members' needs, knowledge and experience. We represented the profession at 23 inquiries, hearings and public policy consultations during 2017.