

**Confidential**

12 February 2010

The Secretary  
Senate Economics Committee  
Department of Senate  
Parliament House  
Canberra ACT 2600

Dear Committee

**Inquiry in to the role of liquidators and administrators, their fees and their practices, and the involvement of ASIC prior to and following the collapse of a business**

This submission is made by McGrathNicol, a firm of 27 partners including 19 registered liquidators, the majority of whom are members of the Insolvency Practitioners Association of Australia ("IPA").

Partners of this firm have been involved in and/or appointed to many of Australia's largest corporate insolvencies including HIH (Court Liquidation), ABC Learning Centres Ltd (Receivership), ION Ltd (Voluntary Administration), Great Southern Ltd (Receivership) and Henry Walker Eltin Ltd (Voluntary Administration). We have also been involved as advisors in many matters, large and small, where our skills and experience have assisted in averting the need for formal insolvency appointments through timely and appropriate restructuring of companies' affairs.

We have been in consultation with the IPA in regard to its submission to the Inquiry and this submission supports the IPA submission, but notes the following in regard to the Matters for Consideration submitted by the IPA:

- + In principle we do not object to the concept of improving the registration process for registered liquidators by, for example, the inclusion of an interview process. However, we note that the current guidelines for registration introduced in 2005 represented a significant uplift in the standards required for registered liquidator status (less so for official liquidator) and the evidence of misconduct would not seem to support the conclusion that these standards are deficient. Rather we would emphasise the risk of practitioner complacency and accordingly, the responsibility of the regulator for ongoing monitoring of practice in terms of compliance with the existing regulatory standards.
- + We recognise the concerns that arise with regard to fees, particularly in matters in the SME sector where the relativity of costs of insolvency to available assets may be stark. In our view, the current regime of creditor approval of fees with rights of oversight by ASIC and appeal to the Courts, both of which have recognised the IPA Code of Professional Conduct as the standard, adequately provides for the protection of creditors interests.
  - In considering the cases where this framework may have failed creditors or other stakeholders, our submission is that the appropriate response is to consider the source of the weakness in the present framework (eg adequacy of and accessibility to creditors of ASIC resources, funding of the costs of access to the Courts, poor understanding by complainants and the community generally as to the real costs of insolvency).
  - We would encourage consideration of targeted solutions to address these weaknesses, rather than the introduction of an alternative review forum which raises the prospect of remuneration approval processes consuming more time and costs across all

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insolvencies and also raises the spectre of divergence in remuneration practices dependent on the review process which prevails.

We are of the view that the insolvency regime in this country is robust and that the framework of legislation, regulation and creditor and judicial oversight, supported by the professional efforts of the IPA and registered liquidators, is appropriate.

In the context of appropriate consultation between government, ASIC and the profession, we would be supportive of initiatives which seek to improve the efficiency and effectiveness of the execution of existing powers within the legislative and regulatory framework to address incidents of poor conduct by registered liquidators, but caution against further regulation which will create an additional cost burden for creditors in all administrations.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'McGrath Nicol', is written over the typed name 'McGrath Nicol'.

Contact: Robyn McKern, Partner