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Committee Secretary  
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CRICOS Provider Number 00121B

Dear Secretary

### **Inquiry into Corporate Insolvency in Australia**

Please find below responses to Questions on Notice (Question 2) that were posed during the Public Hearing in Sydney on Tuesday, 21 February 2023.

#### **QUESTION 2: Could you give us your view on the current debate about the business model of insolvency practitioners?**

*They find themselves doing quite a lot of work to comply with the requirements of ASIC. This is by report to us: they put in reports that are not acted on and, if they don't fulfil the paperwork, which ASIC considers is not very significant but practitioners are telling us is significant, they would lose their licence. We have a lot of paperwork going on and we have a lot of places from which money cannot be recovered being treated in that way. That naturally leads to a cross-subsidising model within the private sector of the closing up of a business for the public good.<sup>1</sup>*

This particular question touches on a number of related issues, including the funding/remuneration of insolvency practitioners and the variety of regulatory roles that ASIC is required to fulfil.

ASIC notes the significant benefit in receiving reports from liquidators, noting:

Registered liquidator reports provide ASIC with valuable information to support our regulatory actions. They provide the basis for successful enforcement actions and enable

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<sup>1</sup> Hansard, Tuesday, 21 February 2023, p 7.



ASIC to ban company directors with a history of failed companies from managing corporations.<sup>2</sup>

However, I recognise and appreciate the frustration of insolvency practitioners, who may already be performing unpaid work, in having to submit extensive reports that are not being acted upon.

Two obvious ways to attempt to address this issue could be by reducing insolvency practitioner reporting obligations, or by ensuring enhanced responsiveness to the reports on ASIC's part. The first "solution" is clearly not ideal and will defeat regulatory objectives. The second suggestion probably falls outside the scope of the current Inquiry. However, I take note of the Parliamentary Inquiry into ASIC's capacity and capability to respond to reports of alleged misconduct, and am hopeful that the Government response to that Inquiry may go some way in addressing the issue that has been highlighted here.

In relation to insolvency reform – alleviating ASIC's regulatory burden by way of the creation of an insolvency regulator could allow ASIC increased scope to focus on the regulation of companies and investigation of director conduct, thus addressing some of the frustration in respect of non-action in relation to reporting of misconduct.

Yours sincerely,

Sulette Lombard

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<sup>2</sup> ASIC Submission no 29, p 25.