

List of Recommendations

Recommendation 1

11.9 The committee recommends that the corporate insolvency arm of ASIC be transferred to ITSA to form the Australian Insolvency Practitioners Authority (AIPA). The agency should be governed by the *Financial Management and Accountability Act* under the Attorney General's portfolio.

11.10 The Memorandum of Understanding between ASIC and ITSA should be updated to ensure that ASIC provides to the new agency adequate resources and the expertise needed to support the oversight of corporate insolvency sector.

Recommendation 2

11.12 The committee recommends that the government commission the Australian Law Reform Commission to inquire into the opportunities to harmonise Australia's personal insolvency and corporate insolvency legislation. The Commission must report to the government within 12 months of the tabling of this report.

Recommendation 3

11.18 The committee recommends that a 'flying squad' be established within the new insolvency regulator. The unit should be responsible for conducting investigations of a sample of insolvency practitioners, some selected at random, others with the aid of a risk profiling system and market intelligence.

Recommendation 4

11.27 The committee recommends that section 213 of the *Australian Securities and Investment Commission Act 2001* be replaced with the following:

All hearings, evidence and reasons shall be heard or given in open session unless otherwise ordered by a judge of a Court of any State or Territory or the Federal Court of Australia who may, at any time during or after the hearing of a proceeding in the Court, make such order forbidding or restricting the publication of particular evidence, or the name of a party or witness, as appears to the Court to be necessary in order to prevent prejudice to the administration of justice or the security of the Commonwealth. Subject to section 216(2), any past hearings, evidence and/or reasons shall be open to inspection by any person, and a register of past matters with the names of parties shall be published and made available for inspection by the public by means of the internet.

Recommendation 5

11.29 The committee recommends that the new Insolvency Practitioners Authority establish a licensing system for corporate insolvency practitioners similar to the system currently used by ITSA. Practitioners should be required to renew their license every three years.

11.30 The new regulator should have the power to suspend a practitioner's license if they are not adequately insured or if a matter referred to the CALDB is of sufficient concern as to warrant suspension.

Recommendation 6

11.32 The committee recommends that as part of the licensing and re-licensing processes, all corporate insolvency practitioners are required to pay a licensing fee.

Recommendation 7

11.34 The committee recommends that it be a condition of a practitioner's first license renewal (ie: after three years of registration) that he or she has completed the IPAA's Insolvency Education Program.

Recommendation 8

11.36 The committee recommends that the new Australian Insolvency Practitioners Authority set and administer a 'closed book' written examination. The passing of this examination should be a pre-requisite for gaining a license as a corporate insolvency practitioner.

Recommendation 9

11.38 The committee recommends that the new Australian Insolvency Practitioners Authority convene an eight person advisory panel to devise a written examination. The panel should be chaired by the Chairman of the Authority and should also include:

- a representative from the Institute of Chartered Accountants of Australia;
- a representative from the Insolvency Practitioners Association (IPAA);
- an insolvency practitioner nominated by the IPAA;
- two academic experts on insolvency law chosen by the Authority;
- a person nominated by the Australian Bankers' Association;
- a person nominated by the Council of Small Business Organisations of Australia; and
- a person nominated by a consumer advocacy group.

Recommendation 10

11.42 The committee recommends that the new insolvency regulator work with the insurance industry to ensure that insurance companies notify the regulator if a practitioner's insurance lapses or expires. In these cases, the regulator should contact the practitioner immediately and allow the practitioner 14 days to acquire the policy. If this is not done, the regulator must suspend the practitioner's license.

11.43 The regulator should sight the insurance documents of practitioners as part of its 'flying squad' activities.

Recommendation 11

11.44 The committee recommends that the *Corporations Act 2001* be amended to impose a penalty on registered insolvency practitioners who operate without PI insurance.

Recommendation 12

11.46 The committee recommends that the major accountancy bodies—the Institute of Chartered Accountants of Australia, CPA Australia and the National Institute of Accountants—establish a fidelity fund to ensure that creditors are insured for fraud and wrongdoing.

Recommendation 13

11.55 The committee recommends that section 1282(2)(a)(i) of the Corporations Act is amended to read:

...is an Australian Legal Practitioner holding a current practising certificate with at least five years' post admission experience as a practising commercial lawyer;

and / or

...holds a Masters of Business Administration with at least five years' commercial experience.

Recommendation 14

11.57 The committee recommends that as part of the proposed licensing system, the insolvency regulator can suspend a liquidator's license if they believe overcharging has occurred.

Recommendation 15

11.59 The committee recommends that section 503 of the *Corporations Act 2001* be amended to insert the following provision:

For purposes of this section, cause shown includes:

- (a) A vote of no confidence by a majority of creditors;
- (b) Where it appears time based charging of the incumbent liquidator has not or will not result in a reasonable cost-benefit analysis for the company.

Recommendation 16

11.62 The committee recommends that the new insolvency regulator work with the IPAA and the Institute of Chartered Accountants to ensure that insolvency practitioners comply with the remuneration report template set out in the IPAA Code of Professional Practice.

Recommendation 17

11.64 The committee recommends that within the new Insolvency Practitioners Authority, there is a unit established that is responsible for gathering, collating and analysing data on a range of corporate and personal insolvency matters. The data must be made publicly available in the Authority's Annual Report and online. There should be no charge for accessing these data.