

Chapter 7

The system for registering insolvency practitioners

7.1 This chapter examines the adequacy of procedures for registering and deregistering a liquidator. The key concern is whether the registration process is sufficiently rigorous to test for the probity and capacity of applicants and whether registered practitioners have adequate checks on their conduct and performance.

7.2 In this broad context, the chapter raises several issues and options, including:

- broadening the recruiting base of insolvency practitioners (paragraph 7.8–7.14);
- implementing an interview process (paragraph 7.15–7.20);
- a written examination (paragraphs 7.21–7.23);
- monitoring and checking practitioners' professional indemnity insurance (paragraph 7.24–7.37);
- implementing a licensing regime with a requirement for regular renewal; (paragraphs 7.38–7.48)
- stratifying registration to match practitioners' skills and experience with the appropriate jobs (paragraphs 7.49–7.51);
- a single registration body for personal and corporate insolvency practitioners (paragraphs 7.52–7.53); and
- promoting ongoing professional education (paragraphs 7.54–7.57).

The registration process

7.3 Recall from chapter 3 that the Australian Securities and Investments Commission (ASIC) determines an applicant to be 'a fit and proper person' if it is satisfied as to their honesty, integrity, good reputation and personal solvency. ASIC's submission noted that in making this assessment, it relies on:

- a letter of membership from a professional accounting body;
- the applicant's experience with corporate insolvency, focusing on length of experience and seniority;
- two referees attesting to currency and depth of liquidation experience, competency, integrity and reputation (whether applicant is 'fit and proper');
- proof of relevant qualifications;
- historical searches on the status of the applicant (i.e. whether subject of any previous adverse decisions);
- a statement by the applicant, declaring that they are not:

- an insolvent under administration;
- convicted of a criminal offence;
- subject of disciplinary action by their professional body or the Australian Taxation Office (ATO); and
- disqualified from managing corporations under Part 2D.6.¹

7.4 Mr Stefan Dopking of ASIC told the committee that in terms of this checklist: the team which undertakes this work does it quite thoroughly, not only by looking at the paper but by making inquiries of our own of people who know the industry quite well in each state and talking to those referees.²

7.5 However, ASIC has noted that one of its current projects is to review the registration process (Regulatory Guide 186) to see if it can strengthen the 'fit and proper' test. The Chairman of ASIC, Mr Tony D'Aloisio, told the committee that once a liquidator is registered 'it is not that easy for ASIC to deregister'. Further, he observed that in contrast to licensing, the requirements of registration 'are not a high hurdle'.³

7.6 The Insolvency Practitioners Association of Australia (IPAA) observed in its submission that to be registered as a liquidator in Australia:

A person requires tertiary qualifications and significant experience... Apart from a degree which includes three years of accounting and two years of legal study, persons applying to be registered must have worked under the supervision of a registered liquidator for a period of 5 years out of the preceding 10. Many of the profession's current senior practitioners have over 30 years' experience, and have been successfully involved in the restructure and orderly administration of many insolvent companies, always acting in the interests of creditors and employees.⁴

7.7 The IPAA also told the committee that it has specific training in its Code of Professional Practice. Further, the new accounting standard, APS 330, adopts a great majority of what is in the code.⁵

Broadening the practitioner base

7.8 The committee has received evidence that current entry requirements for registering as an insolvency practitioner are too narrow, and should be broadened. Mr Geoffrey Slater, a barrister who has represented liquidators, described the

1 ASIC, *Submission 69*, p. 130.

2 Mr Stefan Dopking, *Committee Hansard*, 12 March 2010, p. 11.

3 Mr Tony D'Aloisio, *Committee Hansard*, 12 March 2010, p. 3.

4 IPAA, *Submission 36*, p. 22.

5 Mr Mark Robinson, *Committee Hansard*, 12 March 2010, p. 53.

insolvency profession as a 'little club' of accountants with a vested interest in keeping this arrangement. He told the committee:

Section 1282 of the Corporations Act sets out all the qualifications that people must have...It says that you have to be an accountant and ASIC decides whether that qualification is adequate or not according to their opinion. On what basis do they decide that? If you turn to regulation 9.2.02, it sets out a series of universities and so on. What it essentially does, however, is create a monopoly for accountants. Australia is the only country that does this. In the United Kingdom anybody can sit an exam, including solicitors, and become a liquidator. The same thing applies in the United States. In Europe, you must be a solicitor before you can act as a liquidator. Why is this so? The answer is because...what liquidators are really doing is not accounting and not looking at ledger. Their real skills are commercial.⁶

7.9 Mr Slater told the committee that the type of skills required to be an insolvency practitioner are quasi-judicial skills, which accountants do not have. In this context, he added:

The first recommendation I would make to this committee is that the door should be thrown open, to open the field to anybody who wants to sit the exam. This should be removed from ASIC and Australia should be brought into harmony with the United States and England so that anybody who is qualified or who has a law degree or an accounting degree with sufficient law should be able to sit the exam.⁷

7.10 Mr Slater identified the significant consequence of this exclusive arrangement as the charging of 'monopoly rents'. He contrasted the salaries of partners at private law firms with the earning capacity of partners at insolvency firms. The latter, he claimed, are earning well over \$4 million a year.⁸

7.11 Other submitters to this inquiry have claimed that the insolvency profession operates as a self-interested clique. Mr Ian Fong of Carlovers Carwash, for example, told the committee:

I think the industry is quite small and it is dominated by a small number of practitioners, accountants and lawyers who all help each other make money. For example, when we took legal action to complain about Mr Ariff's conduct his lawyers somehow managed to convince the court that this matter was just a commercial dispute rather than one that involved fraud and criminality. The lawyers put up all sorts of hurdles to stymie a bit. They managed to convince the court to appoint a mediator. The mediator is someone that works within the insolvency industry. They rely on the insolvency industry for work. They then go and get an independent expert

6 Mr Geoff Slater, *Committee Hansard*, 13 April 2010, pp. 47–48.

7 Mr Geoff Slater, *Committee Hansard*, 13 April 2010, pp. 47–48.

8 Mr Geoff Slater, *Committee Hansard*, 13 April 2010, p. 49.

report from another insolvency practitioner. Again, all of them rely on work from each other. How can you have independence?⁹

ASIC's view

7.12 ASIC noted in its supplementary submission that it is open to the concept of broadening the base for insolvency professionals provided that strong standards of conduct, experience and continuing professional development are maintained.¹⁰ It noted that the eligibility criteria was broadened in the 2007 Amendments with the repeal of section 1282(a)(1) relating to membership of an accounting body.

7.13 Mr Slater claimed that this reform was designed to prevent solicitors from becoming liquidators. He noted that the Institute of Chartered Accountants Australia (ICAA) allowed solicitors to join, and the ICAA was listed in the Corporations regulations as being one of the qualifications for becoming a liquidator. Mr Slater thereby reasoned that the repeal of section 1282(1)(a) prevented solicitors from entering the insolvency profession.¹¹

Tightening requirements

7.14 The committee notes that there is, perhaps, some tension between demands to increase competition in the market for insolvency professionals by broadening eligibility criteria and improving standards. Some witnesses argued that rather than broadening the qualifications criteria, it should be tightened. One option in this regard would be to require all practitioners to hold a Masters of Business Administration (MBA). As Mr Bill Doherty told the committee:

These people are basically accountants with no specialist skills. I suppose that they have worked for another group of insolvency practitioners for a while and I suppose they have done a couple of corporate law units in their degree, but how can somebody qualified to that degree then take total control of such a variety of enterprises, in Ariff's case nightclubs, earthmoving companies, metal finishing companies. They simply do not have the expertise. But, yes, certainly tighten up the entry. They should at least have an MBA. I would think it would probably be more appropriate if they were legally qualified.¹²

9 Mr Ian Fong, *Committee Hansard*, 14 April 2010, p. 44.

10 ASIC, *Supplementary submission*, p. 13.

11 Mr Geoff Slater, *Committee Hansard*, 13 April 2010, p. 48.

12 Mr Bill Doherty, *Committee Hansard*, 14 April 2010, p. 13.

An interview process

7.15 ASIC identified an interview process as one of the issues it is currently considering as part of its planned re-write of Regulatory Guide 186. Mr D'Aloisio explained that an interview process would be supplementary to the existing background checks:

An interview may assist. We will have a look at it, but really at the end of the day it is the substantive qualifications that underpin it. So an interview may give you a feeling as to whether a person is being straight with you, but the checks you do in the background with the accounting bodies—the experience, the referees and the declarations that are made to you—are the substance of any application and we do look at that very thoroughly.¹³

7.16 ASIC's supplementary submission noted that the Commission will consult on how an interview process could be implemented. It considered the key questions to be whether the interview is conducted by a panel of interviewers and if so, who should be represented on the panel and how would the panel be constituted.¹⁴

7.17 The IPAA supports an interview process for prospective practitioners. It argued in its submission that an interview process may be important to identifying those 'with an appropriate and informed approach to the practice of insolvency'.¹⁵

7.18 The IPAA highlighted the Insolvency and Trustee Service Australia's (ITSA) requirement for applicant Bankruptcy Trustee practitioners to attend an interview conducted by a three person panel. The interview panel comprises a delegate of the Inspector-General in Bankruptcy, an APS employee (usually from Attorney-General's Department) and an experienced registered trustee nominated by the IPA.¹⁶ Mr Jeff Hanley of ITSA told the committee that the interview consists of 20 questions which are asked to each applicant.¹⁷

7.19 The ICAA also supported an interview process to register insolvency practitioners. As it observed in its submission:

We consider that including an interview as part of the registration process for liquidators would strengthen it. An interview would require the applicant to respond to a range of practical questions, so that they can demonstrate they have the necessary understanding of the legislation deal with the varying issues that may arise.¹⁸

13 Mr Tony D'Aloisio, *Committee Hansard*, 12 March 2010, p. 11.

14 ASIC, *Supplementary submission*, p. 12.

15 IPAA, *Submission 36*, p. 21.

16 IPAA, *Submission 36*, p. v–vi.

17 Mr Jeff Hanley, *Committee Hansard*, 13 April 2010, p. 58.

18 Institute of Chartered Accountants, *Submission 66*, p. 3.

7.20 Dr Vivienne Brand of the University of Adelaide expressed some doubt about the initial interview process but supported ITSA's model of frequent face to face interviews of registered practitioners. As she explained to the committee:

I do not know that I am convinced by the initial interview idea. I think that people who do not have the level of competence they need would probably be picked up by checking the paperwork. The people who had genuinely fraudulent intentions would probably be quite impressive at interview, so I am not sure that that is where you would pick it up. I like that ITSA has a look at people every year, face-to-face. I think that they would then have ongoing exposure to the person and that would probably be helpful. I think there needs to be ongoing checking.¹⁹

A written examination

7.21 This inquiry has received some evidence suggesting that, either in place of or as a complement to an interview, there should be a written examination to screen applicants.

7.22 Associate Professor David Brown told the committee that ITSA currently conducts both an interview and a written examination to screen applicants. He explained that if applicants do not come up to scratch in the interview, they have to sit an exam.²⁰ Mr Mark Robinson of the IPAA flagged the possibility of an exam as a secondary screening process to register corporate insolvency practitioners:

Looking to improve the review of whether somebody is a fit and proper person would also be by way of interview and, if somebody does not present well at an interview, it might go further, even to a written exam, which is the process through which ITSA considers the fitness of a person to be a registered trustee in bankruptcy.²¹

7.23 Mr Geoffrey Slater is a strong proponent of a written examination as part of the insolvency registration process. Specifically, he argued that the exam must be:

...a closed-book exam as distinct to an open-book exam, so that people can prove that they have a fundamental grasp of equitable principles and company law—not just parroting neat little answers that they have cribbed from one of those nutshell books but actually demonstrating to an examiner that they truly understand the underlying concepts.²²

19 Dr Vivienne Brand, *Committee Hansard*, 9 April 2010, p. 10.

20 Associate Professor David Brown, *Committee Hansard*, 9 April 2010, pp. 20–21.

21 Mr Mark Robinson, *Committee Hansard*, 12 March 2010, p. 39. See also IPAA, *Submission 36*, p. 21.

22 Mr Geoffrey Slater, *Committee Hansard*, 12 April 2010, pp. 51–52.

Professional Indemnity Insurance

7.24 Since July 2008, a registered liquidator is required to maintain adequate and appropriate professional indemnity (PI) insurance and fidelity insurance to cover for claims that may be made against him or her. This requirement was introduced under new section 1284 of the *Corporations Act*.²³

7.25 The policy purpose of the insurance requirements is to ensure that funds are available to compensate creditors and other claimants for loss suffered as a result of the inadequate or improper performance of duties by a registered liquidator or their staff in connection with externally administered companies.²⁴ If a practitioner has not paid the insurance premium or the cover has lapsed or been cancelled, creditors will not have recourse to that PI cover. This was the case with Mr Ariff, whose policy lapsed prior to various insurance claims from creditors.²⁵

7.26 ASIC has identified its administration of section 1284 of the *Corporations Act 2001* as one of its key responsibilities in the insolvency area. It has published a *Regulatory Guide* for stakeholders to explain how it will administer the insurance requirements for registered liquidators under section 1284. The Guide states:

We may undertake targeted or random surveillance to ensure that registered liquidators or their firms comply with the insurance requirements. Registered liquidators will also have to confirm each year on Form 908 Annual statement by a liquidator that their insurance cover meets the insurance requirements.²⁶

7.27 ASIC's Chairman, Mr Tony D'Aloisio, also told the committee that it is conducting ongoing work to assess how the regime is operating and how to improve lapses of PI insurance.²⁷ In its submission, ASIC noted that by December 2010, it will have:

...requested practitioners to provide confirmation of relevant insurance policies to test compliance by practitioners with the new provisions and ASIC's regulatory guide. In instances of non-compliance ASIC will proceed to cancel registration under s1290A.²⁸

23 Anthony Housego and Bernard Poole, Bills Digest No. 180, 2006–07, Parliamentary Library, 14 June 2007, <http://www.aph.gov.au/library/pubs/bd/2006-07/07bd180.htm> (accessed 24 June 2010).

24 Australian Securities and Investments Commission, 'Insurance requirements for registered liquidators', *Regulatory Guide 194*, June 2008, p. 6.

25 Mr Tony D'Aloisio, *Committee Hansard*, 12 March 2010, p. 8.

26 Australian Securities and Investments Commission, 'Insurance requirements for registered liquidators', *Regulatory Guide 194*, June 2008, p. 9.

27 Mr Tony D'Aloisio, *Committee Hansard*, 12 March 2010, p. 4.

28 ASIC, *Submission 69*, p. 11.

Criticism of ASIC's monitoring of professional indemnity insurance

7.28 The committee has received strong views that the current system for monitoring practitioners' PI insurance cover is inadequate and must be strengthened. Mr Geoff Slater, a barrister, gave the following critique:

There is a section that says that they have to have insurance. But guess what the problem is: nobody actually checks to see whether they have insurance. And if they do not have insurance, guess what—the section does not lay down a penalty. If I drive a car, and I do not have a green slip, I get fined and I get into big trouble—but, more to the point, under the RTA in New South Wales my registration and my insurance march in lock step. We have a situation with ASIC where there is this enormous risk transfer. They can take on big cases with no insurance and nobody is looking at it. If I wanted to say to a liquidator, 'Have you got current insurance? Provide proof to me', and they are an official liquidator appointed by the court, they do not have to do that. There is no official public register to make sure they are currently registered, in the same way that I can check whether a car is currently registered. Why is that the case? It is the case because ASIC does not actually interview any of these people when they get in; it is a registration process—they stamp bits of paper.²⁹

7.29 Mr Bill Doherty inferred that ASIC needs to verify that insolvency practitioners actually make insurance payments. He explained that in the past, the practitioner has gone:

...to an insurance broker and they say, 'I want to renew my insurance.' The insurance broker gives them a certificate of compliance and a deal where they pay their insurance monthly. Having got their certificate of compliance, then they simply do not pay the payments and the insurance is void. That is how it happened.³⁰

7.30 Mr Jeff Hanley of ITSA told the committee that ITSA checks that trustees have PI insurance at the point of registration, three years later at the point of license renewal and through its annual checks.³¹

7.31 Professor Scott Holmes of the University of Newcastle argued that the obvious solution to the regulatory gap with PI insurance is to require the insurer to notify ASIC when a practitioner's policy lapses or is not renewed. ASIC should be required to ensure they have current insurances through appropriate inquiry.³²

29 Mr Geoff Slater, *Committee Hansard*, 13 April 2010, p. 50.

30 Mr Bill Doherty, *Committee Hansard*, 14 April 2010, p. 13.

31 Mr Jeff Hanley, *Committee Hansard*, 13 April 2010, p. 63.

32 Professor Scott Holmes, *Submission 21*, p. 25.

7.32 Another submitter argued that there should be criminal sanctions if registered practitioners do not hold a valid PI insurance policy.³³

Run-off cover

7.33 Professional Indemnity insurance has a 'Claims Made Basis' policy: the practitioner must have a policy in place at the time a claim is made against them, rather than at the time the alleged act is committed. The PI policy that covers a practitioner is the policy he or she has at the time the claim is made, not the policy held at the time of the alleged act. Accordingly, insurance companies may offer 'run off cover' on a policy where the practitioner will continue to be covered by a policy despite it having lapsed.

7.34 The committee asked Mr D'Aloisio to comment on a proposal whereby insurance companies would be required to notify ASIC if an insolvency practitioner's PI insurance lapsed. Mr D'Aloisio replied that this system would entail monitoring costs for both the insurance industry and ASIC. He added:

...it does not help either, because how do you reinstate it? If the claims occur after, you may not have dealt with the issue that you are concerned with. The issue you are concerned with I think might be better dealt with if you have run-off cover for a period of time: after the policy is cancelled there is cover for claims that occur within a certain period of time.³⁴

7.35 The committee understands that ASIC currently requires insolvency practitioners to have 'run-off' cover as part of their PI insurance. ASIC's *Regulatory Guide* states that registered liquidators should:

...use their best endeavours to obtain automatic run-off cover for as long as reasonably practicable. In any event, their insurance policy should contain run-off cover for at least one year after the expiry of the policy period in the event of insolvency or external administration of the registered liquidator or firm.³⁵

7.36 However, the committee received evidence from the IPAA that to their understanding, the insurance industry have advised that they will not offer run-off cover for insolvency practitioners.³⁶

7.37 The committee is also concerned that PI insurance does not cover fraud and deliberate wrongdoing. In other words, creditors in the Ariff matters would not have been covered. One submitter has suggested that all insolvency practitioners should be

33 Name withheld, *Submission 93*, p. 1.

34 Mr Tony D'Aloisio, *Committee Hansard*, 12 March 2010, p. 8.

35 Australian Securities and Investments Commission, 'Insurance requirements for registered liquidators', *Regulatory Guide 194*, June 2008, p. 33.

36 Ms Denise North, *Committee Hansard*, 12 March 2010, p. 51.

members of the ICAA, the CPA or the National Institute of Accountants. Each professional organisation should have a fidelity fund which would cover fraud.³⁷

A licensing regime

7.38 The committee notes that the possibility of a licensing system for insolvency practitioners was considered as part of the 2007 Amendments (see chapter 1). This proposal included a requirement for regular renewal of licenses to monitor compliance with practice capabilities and professional education standards, the provision for the cancellation and conditional issuing of licenses and more active monitoring of practitioners by ASIC. The government rejected this proposal, preferring instead to target reform of the existing registration process. This was seen as the more appropriate response as it avoided the transitional costs and new compliance obligations of a licensing regime.³⁸

7.39 Despite the 2007 reforms, the committee has concerns that the current registration regime lacks the flexibility to enable the regulator to suspend a practitioner's activities while an investigation takes place. As past experience has shown, considerable damage can be done to creditors while a practitioner is under investigation.

7.40 As detailed earlier (paragraph 7.5), ASIC's Chairman has himself recognised that it is not easy to deregister a liquidator. In addition to the often protracted processes of natural justice, the law requires ASIC to prove the case against the practitioner before he or she is deregistered. Mr D'Aloisio contrasted this approach with a police power to stop a motorist at the traffic lights and issue an infringement notice.³⁹

7.41 Mr D'Aloisio was asked whether a licensing regime would give ASIC the power to suspend immediately the practitioner's activities. He acknowledged that a licensing system, such as the AFS (Australian Financial Services licence) regime, is not without its problems. However, he noted that while a licensing system for insolvency practitioners is ultimately a policy matter for government, 'I think the current policy framework is in that direction'.⁴⁰

7.42 In its supplementary submission, ASIC compared insolvency practitioners' registration obligations under section 1288 of the *Corporations Act 2001* with the AFS licence obligations under section 912A. It noted that:

The general obligations of AFS licensees under s912A provide a basis to address concerns about variable levels of experience of insolvency

37 Name withheld, *Submission 93*, p. 1.

38 ASIC, *Supplementary submission 69a*, pp. 9–10.

39 Mr Tony D'Aloisio, *Committee Hansard*, 12 March 2010, p. 12.

40 Mr Tony D'Aloisio, *Committee Hansard*, 12 March 2010, p. 12.

practitioners through the ongoing requirement to ensure that the licensee and their representatives are competent. These requirements also provide a mechanism through which to address practitioner misconduct by allowing the suspension or cancellation of a licence.

...

...the requirements of s912A and 912B for AFS licensees ensure that the licensee not only has appropriate IDR [internal dispute resolution] processes in place, but that they are also a member of an EDR [external dispute resolution] scheme.⁴¹

7.43 ASIC emphasised that under the AFS licence regime, where it seeks to cancel, suspend or vary a licence, it does need to afford the licensee the right to appear before a hearing on the proposed action and the right to appeal any decision.⁴² Mr Donald Magarey, the Chairman of the Companies Auditors and Liquidators Disciplinary Board (CALDB), also raised this concern. He recognised that a proposal to withdraw a practitioner's registration in lieu of a disciplinary process is a policy matter for government. However, he urged caution:

...I have always taken the view that in this area the existing system has been based on the proposition that, until people have an adequate hearing and an opportunity to present their case and they have natural justice and the rights to see the decision and all the reasons for the decision, taking away their registration would somehow be in breach of the golden rule of innocent until proven guilty. That is my own view; that is the way I have always looked at it. I have never seen that written down but that is the way I have always looked at it.⁴³

License renewal

7.44 In addition to quickly stopping wrongdoing, a licensing system would also have the advantage of improved monitoring of insolvency practitioners. Unlike the current registration process, a licensing system would have a requirement for regular renewal. This would involve the practitioner lodging information every three years (for example) and an assessment by the regulator of the practitioner's conduct and need for professional development. Pending this assessment, the regulator has the options of renewing the license, imposing conditions on it, suspending the license or revoking it.

7.45 The committee notes that regular, systematic surveillance of insolvency practitioners is not a feature of the current system. ASIC only reviews individual practitioner conduct if a complaint is made.⁴⁴ The contrast is with ITSA, which

41 ASIC, *Supplementary submission*, p. 8.

42 ASIC, *Supplementary submission*, p. 8.

43 Mr Donald Magarey, *Committee Hansard*, 13 April 2010, p. 8.

44 IPAA, *Submission 36*, p. 17.

conducts annual reviews of their practitioners and requires them to register every three years (see chapter 10).

7.46 ASIC does require insolvency practitioners to lodge an annual statement concerning personal and practice details and the liquidations that they have conducted (Form 908).⁴⁵ Mr Jeffrey Fitzpatrick, Dr Vivienne Brand and Associate Professor Christopher Symes describe this requirement as a 'de facto process of indirect periodic renewal of registration'. They note that the annual statements are not open to public inspection and copying due to the confidential nature of their content.⁴⁶

7.47 One submitter suggested that an avenue to improve the monitoring of the profession is to put in place quarterly reporting requirements. He suggested that this could be paid for through a registration fee payable to ASIC.⁴⁷

7.48 ASIC estimated in its supplementary submission that the cost of implementing a license regime with a renewal process would be two start-up full time equivalent (FTE) staff and seven ongoing FTE staff.⁴⁸ This costing assumed the current 662 insolvency practitioners would undergo renewal of their license every three years.

Stratifying registration

7.49 Some submitters favoured a stratified system of registration (or licensing) where practitioners are deemed qualified for particular types of insolvency work. This idea was raised in a submission by Mr Fitzpatrick, Dr Brand and Associate Professor Symes. They noted that currently, a registered practitioner has the ability to accept an appointment of any company despite its size, complexity or industry. It is left to the professionalism of the individual liquidator to 'self-govern' whether he or she is 'fit and proper'.⁴⁹

7.50 The academics suggested that despite the higher costs involved, stratifying registration could overcome this 'one size fits all' dilemma. Associate Professor Symes told the committee:

...we were thinking something along the lines of restricted and unrestricted registration, that we might need to review the idea of category A and category B type registered liquidators...There is a distinct possibility of a person having an unrestricted licence—registration as it is now—and that they can embark upon any size liquidation, any size administration or any size receivership. It is possible, I suppose, to look at a stratification where

45 See 'Annual statement by a liquidator', [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/908.pdf/\\$file/908.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/908.pdf/$file/908.pdf) (accessed 3 July 2010).

46 Mr Fitzpatrick, Dr Brand and Associate Professor Symes, *Submission 6*, p. 11.

47 Name withheld, *Submission 80*, p. 3.

48 ASIC, *Supplementary submission*, p. 4.

49 Mr Fitzpatrick, Dr Brand and Associate Professor Symes, *Submission 6*, p. 19.

you would have specialist insolvency practitioners looking at only operating in the small and medium enterprise area. It is possible to restrict on the basis of the size of the company which is going to be wound up or administered or the size of the turnover. If we were to introduce categories, I think we would have to look at differences between education, perhaps putting in hurdles for both education and supervision.⁵⁰

7.51 The IPAA also supports the idea of stratifying registration, albeit through a licensing regime. Mr Mark Robinson, President of the IPAA, told the committee:

...what attracts the IPA to the concept of a licensing regime is two things. On the initial licensing of a person who is reputedly of good standing but whom we have not seen actually operate in the market let us put some terms and conditions to see how they run for a period of time. Maybe we could put some speeding restrictions, if you like, in terms of the number of matters they take on. What also attracts our organisation to a licensing regime [is]...that, if it is on a three-year to a five-year basis, you virtually have to go through a re-application cycle, so your history and past conduct can be taken into account in terms of whether the licence will be renewed.⁵¹

A single registration body

7.52 Some submitters to this inquiry argued that there is no need for two separate registration processes for personal bankruptcies and corporate insolvencies. Associate Professor David Brown from the University of Adelaide queried whether Australia needs two separate registration systems when both are essentially the same people wearing different hats.⁵² He suggested that in pursuing a single registration model, ITSA's approach should be preferred to that of ASIC:

ITSA is now regulating debt agreement administrators on an ongoing basis and requiring them to be interviewed and have an exam. If they do not come up to scratch in the interview, they have to sit an exam. So it seems that ITSA is pursuing that sort of ongoing monitoring and initial entry into the door to a greater standard than ASIC is doing, at least on an ongoing basis.⁵³

7.53 Dr Colin Anderson from the Queensland University of Technology and Dr David Morrison from the University of Queensland have also argued in their submission that given that most registered trustees are also registered as liquidators, there should be one registration authority for insolvency practitioners. They observed that the eligibility requirements for bankruptcy and corporate insolvencies are essentially the same. Further, the merging of personal and corporate insolvency

50 Associate Professor Christopher Symes, *Committee Hansard*, 9 April 2010, p. 3.

51 Mr Mark Robinson, *Committee Hansard*, 12 March 2010, p. 43.

52 Associate Professor David Brown, *Committee Hansard*, 9 April 2010, p. 17.

53 Associate Professor David Brown, *Committee Hansard*, 9 April 2010, pp. 20–21.

regimes should be easier now than it has been in the past given that all corporate law is regulated at Commonwealth level. The academics suggested that:

...even if it is not feasible to integrate all of insolvency regimes under the one supervisory authority, it is possible to place the registration and supervision of the profession under one body.⁵⁴

Professional education

7.54 Another issue raised during this inquiry concerned the educational requirements for insolvency practitioners to become registered and to remain registered. Several submitters noted that standard could be improved. Professor Scott Holmes, for example, told the committee that current regulation of ongoing continuing education is 'pretty slack'.⁵⁵ Mr Bill Doherty identified the need for an MBA and legal qualifications (see paragraph 7.14).⁵⁶

7.55 Mr Geoffrey McDonald, on the other hand, argued that determining what type of education is necessary to be registered and remain registered as an insolvency practitioner is not easy. In his view:

The disciplines that you need for insolvency are very widespread. In many respects, the accounting discipline is probably one of the least disciplines you need. The ability to understand tax law is not necessary. These companies do not pay tax; they do not make profits. Regarding the ability to deal with consolidated accounts and the like, I just do not see that the accounting skills are really the trick; it is commercial skills and probably the law. Defining the skills and qualifications that are needed for a liquidator to become registered is a challenge in its own right. The legal profession, obviously, is very disciplined and has its statutory backing. You cannot act as a legal practitioner without being qualified. That is a breach of the legislation. You can be an insolvency practitioner—not to take on the appointments, but be an insolvency practitioner without necessarily having these qualifications.⁵⁷

7.56 To be a full member of the IPAA, practitioners must have successfully completed the Association's Insolvency Education Program (IEP). The IEP provides a professional qualification for insolvency specialists and is a prerequisite for full membership of the IPA. It is a combination of two units of post-graduate university level study, attendance and performance at workshops conducted by senior practitioners, and written assessment on an ethics topic. The IEP takes a minimum of one year to complete and covers each of the different types of insolvency administration, in both personal and corporate, and includes topics of establishing insolvency, workouts, and ethics.

54 Dr Colin Anderson and Dr David Brown, *Submission 79*, p. 6.

55 Professor Scott Holmes, *Committee Hansard*, 14 April 2010, p. 60.

56 Mr Bill Doherty, *Committee Hansard*, 14 April 2010, p. 13.

57 Mr Geoffrey McDonald, *Committee Hansard*, 13 April 2010, p. 42.

7.57 The IPAA also requires their members to undertake 40 hours of professional development per year. It conducts audits of their members to ensure they have satisfied this requirement. Professional development activities may be offered by the practitioner's firm, through educational institutions or through industry associations. The IPAA, for example, offers the Introduction to Insolvency Program (IIP), which is a two day face-to-face interactive course providing new entrants to the profession with knowledge of insolvency and restructuring. It also runs a 439A Report Training course. This course assists practitioners with the theory of section 439A reports as well as the legal and professional standards, tools for gathering information and presenting information to creditors.

Summary

7.58 This chapter has considered various options to improve the registration process to become an insolvency practitioner. The committee recognises a continuing need to make improvements to this process to ensure that the regulators can have confidence that new practitioners are of high capability and integrity. A more rigorous registration system also serves to bolster public confidence in the profession.

7.59 Chapter 11 of this report provides the committee's view on the key options of a licensing system, an interview process, a written examination, a stratified registration system and a single registration body for practitioners. The merit of each option should be considered in the context of the committee's views on the need for broader reform of the regulatory framework.

