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SENATE

ECONOMICS REFERENCES COMMITTEE

Reference: Liquidators and administrators

WEDNESDAY, 14 APRIL 2010

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**SENATE ECONOMICS
REFERENCES COMMITTEE
Wednesday, 14 April 2010**

Members: Senator Eggleston (*Chair*), Senator Hurley (*Deputy Chair*), Senators Bushby, McGauran, Pratt and Xenophon

Substitute members: Senator Williams to replace Senator McGauran

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cor-mann, Crossin, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Han-son-Young, Heffernan, Humphries, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronald-son, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Eggleston, Hurley, Pratt and Williams

Terms of reference for the inquiry:

To inquire into and report on:

The role of liquidators and administrators, their fees and their practices, and the involvement and activities of the Australian Securities and Investments Commission, prior to and following the collapse of a business.

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Committee met at 8.21 am

CHAIR (Senator Eggleston)—I formally declare open this hearing of the Senate Economics References Committee inquiry into the role of liquidators and administrators. On 25 November 2009 the Senate referred this inquiry to the Senate economics committee for report by 31 August 2010. This inquiry will investigate the role of liquidators and administrators, their fees and their practices and the involvement and activities of the Australian Securities and Investments Commission prior to and following the collapse of a business. To date the committee has received over 70 written submissions.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a Senate committee. If a witness objects to answering a question the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer a witness may request that the answer be given in camera. Such a request may of course be made at any other time.

I remind members of the committee that the Senate has resolved that departmental officers, if witnesses, shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions to superior officers or to a minister. This resolution prohibits only asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. A witness called to answer a question for the first time should state their full name and the capacity in which they appear, and witnesses should speak clearly and into microphones to assist Hansard to record proceedings.

[8.24 am]

NASH, Mr Gregory, Private capacity

Evidence was taken via teleconference—

CHAIR—I welcome Mr Greg Nash. Would you like to make an opening statement?

Mr Nash—I have made a submission, which I presume has been read. As to my situation, I was involved in a business venture with a very senior liquidator named John Lord, who is a senior partner of an accounting firm known as PKF Australia Pty Ltd. As I state in paragraph 5 of my submission, they have offices in 125 countries and more than 160 partners within Australia.

If my concern with Mr Lord were merely a commercial dispute between him and me, I would not have put myself in a position to make this submission given that I have recourse elsewhere. What concerns me is that Mr Lord has behaved quite improperly both in his activities as a liquidator and in his private business activities revolving around his directorship in a company, involving his own firm. Ms Sylvia Hale, a Greens councillor in the Upper House of New South Wales, has advised us ASIC of this, and the liquidator of Premium Collections, of which Lord and I once were—and another person still is—directors has filed a report with ASIC, called a 533 report, which is a report that a liquidator must file when he considers that there have been offences committed by directors under the Corporations Act discovered during his investigation in the liquidation.

In short, one of the major matters is that Lord and PKF, who were in charge of the accounting, and by my consent—on account of the fact that they basically had the imprimatur of ASIC—lent something like \$2.5 million to themselves and associated companies while \$1.5 million worth of creditors have been left unpaid, including on my understanding, two government departments, one being the New South Wales WorkCover Authority and the other being North Sydney local court under the auspices of the Attorney-General's Department. That basically grounds where we are.

Senator WILLIAMS—Mr Nash, thank you for your time today. You must remember that we are not a court. We are legislators and we are looking through this inquiry to see whatever changes may be required to perhaps improve the industry. You have reported these incidents to ASIC. Have you had any response from ASIC?

Mr Nash—Not at all. Further to that, I also made a report to the state Crown Solicitor, who is the subset of the Attorney-General's Department that handled the North Sydney local court debt and was basically just given the brush.

Senator WILLIAMS—Have you any suggestions as to what laws needs to be changed either at a state level or a federal level to prevent these sorts of things from happening—assuming that what you are saying is correct, of course, and I have no reason to doubt you.

Mr Nash—At the state level, I can think of one law that should be changed in terms of the mercantile agents act. In this particular case, mercantile agents request from an insurance

company, which is a shopfront for WorkCover—moneys to pay out to courts for various process to be issued. That money is paid into the general account of the debt collector, and to my mind, and to Sylvia Hale's mind, it ought to be paid into a trust account and held there until it is properly paid to the person that it was intended to, and perhaps a separate trust account from the trust account into which the recoveries are made. Federally, it occurs to me that there is all the law in the world to do what needs to be done, but none of the will.

Senator WILLIAMS—Roughly when was this reported to ASIC, do you know?

Mr Nash—At least a month ago by Ms Hale. There was an initial report put out by the liquidator in the middle of last year that foreshadowed there had been loans made by directors basically to themselves, which is in breach of large sections of the law. As I said, it is not the law that needs to be changed; it is the will to enforce it.

Senator WILLIAMS—This committee has heard a lot of evidence from the hearings we have had so far and I must say we have not had a lot of praise for ASIC. One of my concerns is that people report wrongdoings in the corporate world to ASIC and seem to get little response. What would be your reaction if I were to suggest to you that the insolvency industry be placed under a separate umbrella, perhaps combined ITSA and those sections of ASIC that handle this side of the industry so that we have a separate industry with an ombudsman, a watchdog, perhaps a flying squad to audit liquidators' books and so on? How do you see we need to change things to improve this industry, because obviously there is a perception out there that people are not really happy with the insolvency industry?

Mr Nash—That is right. Part of it is because the insolvency industry is a subset of the accounting industry and the accounting industry is not an industry that attracts a lot of detrimental attention. Insolvency experts are the gunslingers and the fighter pilots of the accountancy industry. Yes, I do believe they should be under a separate umbrella of regulation, because they are a separate type of person.

Senator WILLIAMS—In regard to the ombudsman issue, people who deal with insolvencies are very bitter and annoyed; they have lost their money and livelihood. I suppose with an ombudsman at least they could listen to the smaller issues. There might be a \$1,000 loss to a small business, but the money has been just about all taken up by the liquidator, the administrator or whoever is the receiver. I suppose an ombudsman could look at smaller issues, whereas I think if you went to ASIC with a \$1,000 problem they would say, 'Look, we have bigger fish to fry'—

Mr Nash—Absolutely.

Senator WILLIAMS—At least people would have somewhere to go to have their problems aired.

Mr Nash—Absolutely. The police will not touch a fraud under a couple of million dollars. They have got too much work to do. Many of these things are matters of opinion, so ASIC just says, 'That is a commercial matter. Go and sort yourself out with the liquidator via the courts.' The charge-out rates of these people and the leverage they get off their employed staff is

unbelievable. I have actually heard Mr Lord complaining about his \$400,000 per quarter GST bill.

Senator WILLIAMS—Finally, you have obviously been around for a while. Have you had much to do with liquidators over your life and can you give me some details or opinions on how you see the industry and how you see perhaps the industry could be made better through legislation, regulation or whatever?

Mr Nash—As I say, the regulations are there and the law is there. All of that is sufficient provided it is enforced. What you have, though, is a perception that they are accountants as opposed to what they really are—colloquially cowboys—and so the laws and the regulations are not enforced or chased through. I will be very surprised if I hear anything from ASIC about Mr Lord despite the most blatant breaches of both New South Wales and federal law as well as what they call civil offences under the Corporations Act. Yes, there should be a separate section to deal with them, because they are different people. They are more aggressive. They are more on the ball than normal accountants. But simply that what is already in existence is enforced.

Senator WILLIAMS—We heard evidence yesterday to the effect that it is perhaps a closed club. Once someone is appointed as a liquidator they are in total control. They are very hard to remove. We had a barrister who was saying that their charges are exorbitant. Do you think we need some more competition brought in where solicitors such as yourself or other people could actually sit a test and become liquidators to open up more competition into the industry?

Mr Nash—Yes, that would be entirely acceptable. The accounting side of the things can be hired. It is the team leadership issue where the head liquidator gains his power. You are right; it is a closed shop. There is only a few of them. There is a number with big reputations. When I was a part of this partnership I was winding up something like 50 companies a month. Because all of those were appointed by Mr Lord as liquidator—and it might be mentioned—

Senator WILLIAMS—Were they court appointed?

Mr Nash—Court appointed liquidators, yes. But when I say ‘court appointed’, the court put the stamp of approval upon my client’s instructions to appoint Mr Lord. He was using that as a marketing tool to obtain more business for his liquidation section in PKF. As I keep saying, the laws are there. The authority in ASIC is there, but it just does not appear that the will to proceed is there unless there is something unbelievably rampant and public, in which case sometimes the mountain can move.

Senator WILLIAMS—As I have said, you have probably been around for a while. Do you think white-collar crime is systemic and growing in Australia? Perhaps that is a very difficult question for you to answer. But over your time have you seen an increase in this sort of thing? My concern is this that these days you do not see banks robbed all that often with a pistol, but you see with a pen perhaps doing the wrong thing instead.

Mr Nash—Absolutely.

Senator WILLIAMS—Are you concerned about the increase in white-collar crime through your experience in life?

Mr Nash—I am, and also about the fact that it is treated less seriously than a pistol hold-up, although it causes the same damage to the bank, to the public and to public confidence. The difficulty of course is that if a man walks into a bank with a gun it is easily identifiable as to what he is there for. When you have an accountant cooking the books and lending money to his mates, extending repayment dates and those sorts of things, white-collar crime is a very difficult crime to prove. One of the problems about it is that the victims do not have the money—which is mainly because it is in the hands of the white-collar criminal—to pursue the criminal. So many times, particularly many times in liquidations, there are clear breaches for which the liquidator is unable to get funding, even when everybody knows that if it went before a proper tribunal there would almost undoubtedly be a conviction. I must confess that, when I was a solicitor doing lots of liquidation work, I would take refuge in the fact that I knew that people who were pursuing the liquidators or asking the liquidators to pursue directors and whatnot would not have had the money to continue the fight.

Senator HURLEY—I want to pursue this issue about policing and how we would stop those elements of the industry that are involved in breaching the law. I think this is possibly a difficulty with the ombudsman issue, because an ombudsman would certainly be able to hear complaints but would have no better ability—in fact less ability—to pursue people through the courts than ASIC would. Might it not be better to create checking points where we can stop this behaviour or at least get easier records of this behaviour, because it seems to me a lot of the prosecution is not occurring because, as you say, a lot of these things are matters of opinion and it is very difficult to prove?

Mr Nash—Yes.

Senator HURLEY—I am wondering if there might not be changes to procedure and practice so that it is easier to stop people in their activities and investigate them well before it carries on. Can I have your view on that?

Mr Nash—Yes, indeed. You still have an issue with funding. I would suggest an ombudsman would be appropriate for small amounts and would work interarum, in the sense of, ‘I don’t want to report it to the ombudsman so, yes, I will redress your complaint to me without just ignoring you’, which is what happens now. But the real problem is that there is no money—well, there is probably money—but nobody spends any money chasing these people down. As I say, the law is complete. The law is in fact more than complete, with numerous sections that deal with wrongdoing. But because of want of funds and because, in my view, of want of will at ASIC they are just not pursued.

Senator HURLEY—Yet we heard from a witness yesterday, and we have had other submissions of people, complaining that ASIC is spending too much money and time chasing them down.

Mr Nash—I have been a specialist insolvency practitioner since 1994, and that would be the first time I have heard that.

Senator HURLEY—Please read our transcript from yesterday. Mr Gould was very unhappy.

Mr Nash—I have no doubt—and some others.

CHAIR—Do you think ASIC is well enough resourced—

Mr Nash—No.

CHAIR—to provide the services it is supposed to? You have already answered it in short. Now you can give me a longer answer.

Mr Nash—I can only presume that it is either underresourced or negligent, because there are so many complaints and so little action; it can only be saying, ‘We can’t be bothered’, or, ‘We are not going to do it for other reasons’ which are inappropriate, or, ‘We have not got the people to do the investigation.’ As I said, the difficulty with white-collar crime is that a lot of it is to do with opinion. A lot of it is to do with accounting and it is fairly resource heavy.

CHAIR—What we have heard in general terms about the insolvency profession is that they tend to ensure that the banks that have some sort of property guarantee over the loans that a company has get their money back and the insolvency practitioners make sure they get plenty of money because of the hourly charge rate system, and the losers are the small businessmen and unsecured creditors, and the smaller cases tend to be ignored by ASIC. Is there a case for a different type of body to be overseeing this whole business of insolvency?

Mr Nash—A less formal process? I have to confess I have not given any thought to that, because I do believe that the process that is there, apart from the cost of it, is appropriate. The companies that Mr Lord was being referred to from this business were companies that had failed to pay their workers’ compensation insurance premiums. That generally is the litmus for insolvency; the same as failure to pay PAYG and so on. Notwithstanding that, Mr Lord was able to make a substantial living out of those companies proving that there was money still in the companies, which went to him before it went anywhere else, that is, to unsecured creditors, employees and so on.

CHAIR—What we started off hearing in this inquiry is that there are a few rotten apples, but now we hear there is a much more systemic failure in the whole system, and we are concerned about how that might be addressed through restructuring or a different sort of process. If you have some ideas on that we would be grateful to hear them.

Mr Nash—I am very much in favour of the suggestion that there be a specialist body to oversight insolvency practitioners aside from all other accountancy practitioners. That in itself would be a sign of the will to clean up the profession. Secondly, yes, I believe there should be some way of small matters being tidied up without it costing 20 times more than the amount at issue. That is an ombudsman type of situation. Lastly—and again we are back to the funding issue—the laws are there; it is just that they are not being enforced.

Senator PRATT—We have had some discussion this morning about—I am not quite sure how you put it—the difficulty in deciding what is legitimate versus not legitimate. I want to explore that with you a little bit further in terms of what is fair pay for fair work, what is overcharging, and what is blatant corruption, white-collar crime and stealing? An intelligent man like you has found himself in the middle of these business dealings. If this can all happen around you, what hope do regulators have of being able to penetrate those murky depths?

Mr Nash—The problem is that I failed even to look at the murky depths, because the regulators, in my view, had given the person that I would have examined in the normal course a stamp of approval. ASIC has said, ‘We hereby certify you as an official liquidator.’ To me that means that you pass certain standards of probity and all of the other sorts of things that follow on from there. That is how I got sucked in; I trusted that ASIC had made the appropriate decision when they appointed Mr Lord an official liquidator. I find it very difficult to believe that this sort of behaviour from him is a one-off in his career. I would assume without having any knowledge or proof or evidence or even indications to the contrary that there have been similar instances in the past in his career. Yet here he is still practising, and a leading practitioner.

Senator PRATT—On the question of what overcharging looks like versus fair pay for fair work versus blatant corruption, how do you think regulators should create and drive for an ethical framework within a profession that can actually manage these issues?

Mr Nash—As a lawyer, my accounts are subject to strict scrutiny—absolutely strict scrutiny. I have to have cost agreement. I have to advise people on how they can challenge my account. I have to have my account submitted for assessment. If I miss some technical detail, I run the risk of not being paid at all for any of my work. Liquidators do not do that. They just give you a list of their charge-out rates. They are supposed to be approved by the court and really that is just a rubber stamp. The court approves whatever is put in front of them. I have never seen a court not approve a liquidator’s set of fees. That is not to say that has not happened, but it would be a rarity. It would be a black swan.

Senator WILLIAMS—The committee has heard of situations where a liquidator has done the wrong thing but it has been very difficult to remove them from their position. How would you feel if we could make it a situation where if the majority of creditors had a vote they could actually remove the liquidator from his or her position?

Mr Nash—That can happen in the early stages of a wind-up. But you have to remember when you talk about a majority of creditors, there are dollar amounts and then there are a number of people. You can have 10 creditors, with nine of them are owed a dollar and one of them owed \$1 million. How do you decide the majority there? Again, because of a lack of funds, if there is a majority of money voting one way and a majority of heartbeats voting another way, the whole matter can be taken off to court and the court can made a decision. \$50,000 later, is it worth it?

Senator WILLIAMS—I would like to see the industry more accountable and what I am getting at is that if you had a situation where the majority of creditors could remove the liquidator from their position that would surely make the industry accountable. The liquidator would say, ‘I am not simply going to milk every drop out of this company. I will see what I can get back for the creditors. If I don’t do that I may well get sacked from the job.’ We hear so often how there might a \$1 million worth of assets. We heard in Adelaide where there was \$3.5 million worth of proceeds from sales, and all the creditors and the bank never got a cent; the fees and charges were \$3.5 million. To me that cannot go on. To me that is just unbelievable. How can it be that if a liquidator is blatantly ripping off assets and moneys out of a company they cannot be removed? We had one case where it cost \$1.8 million in legal fees to have a liquidator removed from their position. Who has \$1.8 million to spend if you have a liquidator overcharging?

Mr Nash—That is exactly right.

Senator WILLIAMS—What can we do to make them more accountable to the creditors?

Mr Nash—Firstly, liquidators count on the fact that the people challenging them do not have the money to pay for it. They live by that code. Secondly, when you were talking about putting them under a separate umbrella, you should have a look at the regime by which solicitors have to have their costs assessed and allowed, and force the liquidators to go through the same procedure. Or perhaps if a sufficient number of creditors made an application then the costs would have to go through the same procedure. But as I say, although a court is supposed to approve a liquidator's costs, it is just a pro forma. I have never seen one knocked back and I have been involved, as I said, with liquidation for nearly 25 years.

Senator WILLIAMS—You talked about ASIC's resources and you are of the opinion they are not resourced well enough. I asked this question to Mr D'Aloisio at Senate estimates a couple of months ago. I asked him three or four times that night in Senate estimates: are you resourced well enough? The answer each time was, yes, we are.

Mr Nash—As Mandy Rice Davies said, 'Well, he would say that, wouldn't he?' The situation is that they are not, because there are matters that require investigation that are not being investigated because other matters are and they do not have enough people to spread around.

Senator WILLIAMS—You are suggesting that his answer was perhaps more political. He did not want to upset the Treasurer or someone, especially after recent times when they have lost a money, such as One.Tel et cetera, a call for more money may be a touch embarrassing for ASIC?

Mr Nash—That is right. When I say 'money', money leads to having more personnel, and that is what is required.

CHAIR—Thank you very much for your submission this morning. If we need to contact you again we will come back to you.

Mr Nash—I am expecting responses to Sylvia Hale's questions on notice. They were supposed to be returned yesterday. They have probably come down during the evening. As soon as I get those, I will make sure that the committee gets a copy of the answers.

CHAIR—Thank you. If you have any ideas about how we might strengthen the regulation and perhaps strengthen the role of ASIC please communicate with the committee.

Mr Nash—I will.

CHAIR—Thank you very much.

Mr Nash—My pleasure.

[8.55 am]

DOHERTY, Mr Bill, Private capacity

CHAIR—Welcome, Mr Doherty. Do you have any comments to make on the capacity in which you appear?

Mr Doherty—I am a former director of Independent Powder Coating and a victim of Stuart Karim Ariff.

CHAIR—Would you like to make an opening statement?

Mr Doherty—Yes, thank you.

CHAIR—Please proceed.

Mr Doherty—I have 12 points that I would like to bring up to the inquiry. Perhaps I could just work through those points. There are a couple of errors that I have noticed have crept into the inquiry. Mr Michael Dwyer, the ASIC Commissioner and past partner of KPMG—he is also a past IPAA president—told the inquiry that PI insurance for this industry covers fraud. That is not the case. PI insurance covers fraud for the employees of the IP, not the IP himself.

Ms North, from the Insolvency Practitioners Association, said in the IPAA submission that the IPs take on considerable risks which help to justify their extraordinary fees—firstly, the risk of litigation. Actually they do not take a risk there, because what they do is use the company they have seized control of as a litigant. Also, that in taking on assetless administrations they have the financial risk. They do not, because they simply do not do anything when they have them.

Mr Ariff is described as a bad apple. That simply is not true, unless the bad apple has been in the barrel for far too long. There was a very ominous but very accurate quote from a colourful Melbourne identity by the name of Mick Gatto when he was chasing down Opes Prime money. He said to the creditors, ‘These Opes Prime clients can take their chances and lose all their money to lawyers and receivers or they can take their chances with me.’ That is from Mick Gatto. Considering its source, that statement is worth reflecting on.

How does the insolvency industry fit into the criminal networks? We will use Ariff as an example. You do not have to look very far, because the criminal reporters of the press have already worked it out and they have already published it. Stuart Ariff; Adrian Pamplin, the bikie; Bulla Tip & Quarry; Leo ‘the Gun’ Khouri; Tom Karas; Mick Gatto; John Khouri—it is all there. It is all public record.

CHAIR—Would you like to table that and let us take a copy of it, please?

Mr Doherty—Yes. I note that Ferrier Hodgson has recently launched civil action in the Supreme Court against that same Tom Karas and Co. regarding Bulla Tip & Quarry, because essentially he employed Ariff to rip the company off. Ferrier have finally discovered that, but

they are not going after Ariff. They are not going after him because he is now a declared bankrupt, so he is basically not worth chasing. Imagine if ASIC had pursued that case way back then. They are the ones that tipped Ariff out or encouraged Mr Ariff to resign from Bulla Tip & Quarry.

I guess we come to the question that, with all the complaints that were made to ASIC by so many people for such a long period, including Joel Fitzgibbon in parliament in August 2005, calling him a rogue administrator and calling on ASIC, what actually prompted ASIC to act? That is what prompted ASIC to act—the press, and Stuart Ariff, Mick Gatto, Tom Karas. If we did not have the press he would still be playing.

I noticed Mr D'Aloisio continues—several times as Senator Williams mentioned earlier—to deny that ASIC lacks resources. To me, that is simply an admission that he does not have a clue what is expected by the public of ASIC. What did ASIC actually do in the case of Ariff after being forced to act by the press? I have to say that their actual investigators, when they were finally assigned to the task, were very good and dedicated people. But they obviously lacked resources. I was getting calls at 11 o'clock at night. I cannot understand how they can keep their morale to the level that they have given the conditions they work in.

At the end of the day they investigated 16 companies that Ariff had something to do with—16 only. The ASIC barrister was asked that specific question in court and confirmed it under Justice Bergin. They found enough evidence in every single case, from the biggest to the smallest, from the first to the last. But they did not pursue the other 280 administrations that Ariff was involved in. They did not look for anything other than the lowest hanging fruit, because they simply did not have the resources to do it.

In the end they came up with 83 allegations and claims of just less than \$5 million in compensation. That is the tip of the iceberg with Mr Ariff alone. Since then we have had Juice Station, Armidale YCW, Adamstown Rosebud, Brian Mitchell Motors, TIAC Services—all of these people coming out of the woodwork and they are all victims of Ariff.

The real extent of these frauds has not been investigated. Mr Ariff conveniently admitted everything, agreed to a life ban and agreed to pay \$5 million compensation. What effect did that have? Absolutely nothing! There is absolutely no deterrent value. There is no effective compensation and Mr Ariff is laughing his head off. That is quite apart from ASIC's negligence in allowing him to retain records and subsequently allow them to be destroyed and to allow his PI policy to lapse for a year whilst they were investigating him. That is plain incompetence.

What have ASIC and the associations for that matter done about the rest of his gang, because he actually had a little fiefdom. He had his own valuer and auctioneer. He had his own very flexible industry expert. He had his own hit man. He had quite a gang. Those people are still out there. None of them has been investigated. What about his staff—all the staff that he trained? What is happening with them? They have gained all this valuable experience under Mr Ariff. Where are they? I can tell you. They are now at Jirsch Sutherland, Sims Partners, SV Partners and Ferrier Hodgson. They are all distributed throughout the industry—little cancers growing everywhere.

What about the ASIC electronic complaints procedure? If you make a complaint against ASIC you get on their website and fill in a complaint form and hope for the best. I did that three times. Nothing really happened except that I was going to get added to their database again and again. Most of the others also had the same experience. About six months after ASIC launched their court action I thought to myself, 'I will just see how this system works', so I put in another electronic complaint. Do you know what I got back? 'Thank you for your correspondence of 1 May 2009. The issues you have raised will receive careful consideration and ASIC will contact you again in due course.' At least two companies that I am aware of have been told outright by ASIC that ASIC was simply not resourced to handle complaints less than \$10 million. That does not really augur too well for the 99 per cent of the 1.7 million corporations in Australia that they are charged to protect, does it?

IPs in this country act in a policy and regulatory vacuum. They know it and they take every advantage of it. The industry associations are basically clubs. They serve no effective regulatory purpose. Justice White in the case of Wambo, in describing Ariff, said, 'He wilfully and recklessly failed to make inquiries for fear of learning that which he did not wish to know.' That equally applies to the Insolvency Practitioners Association, the Institute of Chartered Accountants and the CPAA. They will undoubtedly want the status quo to remain. Change it as little as possible. Please do not listen to them. They say that the first complaint they received against Ariff was mine in 2006. Obviously they do not read *Hansard*.

Let us look at the way that the insolvency practitioners are appointed, just referencing this one bad apple theory. Stuart Ariff worked for a company called Star Dean-Wilcocks. John Star was disciplined and booted out of the industry for a year by the CALDB. The same week Stuart Ariff was appointed registered liquidator. Later on, Dean-Wilcocks was booted out by CALDB again for another year. The same month Ariff is appointed official liquidator. That is called succession planning in this industry.

Stuart Ariff Insolvency Administrators finally rises out of the ashes of Star Dean-Wilcocks. What does he do? He employs Yazni Ariff, his sister, and the rest of his little gang. It is interesting that he employs Yazni. Some years ago Yasni Ariff was involved in an insider trading case with Tri-Continental. She was also convicted for making a false loan application and had to do 150 hours community service or something, but she is allowed to operate in the insolvency industry and I think she is still a member of the Insolvency Practitioners Association.

To become an insolvency practitioner what do you actually do? You train for three years as an accountant. You do a couple of corporate law units. You spend five years working for another group of similar people and then you have a licence to steal with impunity, protected. And you can charge \$500 or \$600 an hour to do it as well. It is amazing.

Just in terms of this single rotten apple idea, we have Ariff, rising like a phoenix out of Star Dean-Wilcocks. It is interesting that Tom Karas appointed Mr Ariff at Armidale YCW football club. He then appointed Paul Vartelas, Melbourne liquidator, on top of Ariff as a receiver. The first thing Vartelas did was to rip out all the poker machines out of Armidale YCW, flog them off and give the money to Karas. Mr Ariff supposedly could do nothing about that. Interesting, is it not, that a couple of months later seven of those same 14 machines—identical machines, not like those machines but exactly those machines—were offered by Stuart Ariff to the Rosebuds club. Funny little game this, isn't it?

What is ASIC actually doing about the Ariff money trail? Apparently nothing! It has been eight months since the court case. Absolutely nothing! Why are they not chasing it? It is pretty obvious where the money has gone to anybody who has been involved with it.

Mr Ariff was paying the mortgages for three properties from his accounts, Stuart Ariff Insolvency Administrators, Stuart Ariff Nominees (No. 2); his Bolton Street premises, the Black Hill property and St Leonard's property. Black Hill and St Leonard's are both in Kathleen Clarke's name, although the mortgages were paid by Stuart Ariff, Kathleen Clarke being Stuart Ariff's wife. Bolton Street was in a company name. Bolton Street's commercial premises are the entire second floor of 21 Bolton Street. That ended up being sold to a company called Seven Down. Seven Down is a company controlled by Yazni Ariff and David Renner, her husband. It was sold for \$700,000, which of course is a fraction of what it is worth.

What about the Car Wash Kings, a small division of the Carlovers company that was prised out of Carlovers by Ariff and hived off to one of his mates? What about Florsheim, Tony Bianco, Figgins? These are all shoe companies. It is interesting who owns Florsheim these days—Yazni Ariff and David Renner. Florsheim originally went into administration under Star Dean-Wilcocks, being handled by Yazni Ariff and Stuart Ariff.

What about Beachtop, where he flogged my gear off to for five per cent of what I offered him for it—registered at Smith, Sharpe and Abbott, Armidale accountants, themselves phoenixing out of Sharpe Partners and Smith and Meade, who were responsible for a \$23 million fraud a few years ago? Beachtop is registered at Smith, Sharpe and Abbott, the company that ended up with my gear. The auctioneer for Stuart Ariff, his registered office is also Smith, Sharpe and Abbott at Armidale. It is a funny little game, isn't it?

I guess our theory is that ASIC will do nothing more; they think that the case is closed. The case is not closed. A couple of days after Justice Bergin's judgment in August 2009 some of my associates and I wrote a letter to Mr Bowen protesting that we could not believe that ASIC would let the case drop like that; that they would accept his admission and his meaningless \$5 million offer for compensation knowing that he was going into bankruptcy.

I got an email back a couple of months later saying that they would respond and surprise, surprise this Monday I got a letter from the office of the Hon. Chris Bowen. What it says is that under the ASIC Act the minister has limited powers to intervene as the responsible minister. He is specifically precluded from giving ASIC a direction about its policies or priorities in relation to a particular case. So, who do ASIC report to?

CHAIR—One group they report to is the Senate and the Senate estimates committees, and we can ask some questions about these sorts of issues. You have talked for quite a while and we only have half an hour left. One of the issues you were raising continually, which other people have raised, is the fact that ASIC does not seem to be very concerned about businesses under \$10 million. Our job is really to come up with suggestions to change the system. Should we be thinking about a different kind of body dealing with small businesses, that is, businesses under \$10 million, if ASIC is so underresourced that it cannot deal with them, which is what they say or would say. Should we have a different body? That is one question. The other goes to the regulation of this whole insolvency practice industry. Should there be a single body which registers, with registration being for a limited period, and has the ability to deregister and

suspend from practice if there is reported malpractice, and require ongoing education in the field?

Mr Doherty—Yes. One of the problems that I see with ASIC and their resources is that the chief of ASIC does not appear to recognise that he is underresourced. I suspect that is because he does not realise what the public's expectation of ASIC is. The public's expectation is that they actually do their job. ASIC are a net profit generator for the government. They have about a \$300 million budget, but they bring in \$600 million. Why are they a profit generator? Why aren't those funds just allocated to do the job that they are supposed to do?

CHAIR—That is a good point.

Mr Doherty—As far as the licensing goes, yes, tighten it up. 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.

CHAIR—What about the registration? In the case of Ariff if there were an ability to suspend from practice on the first complaint he could have been suspended?

Mr Doherty—It would have been if they had acted. Even if that regulation is there if there is no action then it is not worth while having the regulation. But, yes, if the regulations are going to be enforced, that would be a good regulation to have.

CHAIR—The comparison that has been made a few times is with medical boards or law boards or law registration. In medicine if there are complaints made about malpractice and incompetence then the doctors are suspended from practice. This area involves equally serious matters in terms of finance and the public good in the way companies operate, I would have thought.

Mr Doherty—Indeed. In fact, when ASIC had already compiled their case and they knew what they had, he should have been suspended then, not wait for another year, allow his PI to lapse, allow him to destroy the documents. Suspension at that point—

CHAIR—Public liability insurance is another issue. It should always be there in place, I would have thought, as a matter of law and if it is not there the person should not be allowed to practise.

Mr Doherty—Ideally. But then again they are the ones that report to ASIC that they have the insurance, and Ariff did report to ASIC that he had the insurance. But the way that that insurance system works is that they go 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.

CHAIR—Again, in the medical area registration includes the requirement to have proof of medical professional indemnity insurance. I do think that is quite a good model.

Senator WILLIAMS—The example I gave is I bought a car in 1973 for I think \$1,000 that I put on hire purchase, and I had to have comprehensive insurance. The situation is that if I did not pay my comprehensive insurance the insurance company would notify the finance company. Simply, with only 600-odd liquidators, if they did not renew their insurance—did not have it paid up—the insurance company could notify ASIC. But ASIC are getting notified at the end of the financial year when the liquidator puts in their report to ASIC, and they can put in what they like. It would be quite simple and very cost effective, because you would probably only have half a dozen, if that, in a year who did not renew their PI insurance. Surely the insurance company should contact ASIC. That would be a way of policing it and ensuring that all liquidators have PI insurance.

Mr Doherty—I totally agree with you. These accountants have declared themselves to be a profession and they are officers of the court. They have implied respect. They have some implicit or assumed levels of ethics which they simply do not exercise. What we would be doing is saying, ‘Basically, you’re an accountant. You have a couple of corporate law units. You have a bit of experience. Great; where are your real qualifications?’ Make them study law and make them have an MBA. Then as far as their services go, the auctioneers and valuers, make sure the auctioneers are licensed. The auctioneers must be licensed as well. In New South Wales auctioneers do not have to be licensed. Anyone can do a goods and chattels auction. Also make sure that fiefdoms do not exist. You cannot have the same auctioneer/valuer every time—your own personal auctioneer/valuer. In Ariff’s case his auctioneer/valuer started his business from Ariff’s office. It is ridiculous. They should be on a roster system. Maybe ASIC should be controlling that roster. They apply for a valuer. Then they apply for an auctioneer. And they pay a fee for that. That is fine. That is not a problem.

My view is that we should consider the actual role of the administrators themselves, because they simply do not have the skills to run the variety of businesses that they have. Surely the companies and their own accountants could come up with a scheme like chapter 11 where they notify ASIC, ‘Hey, we are in trouble here’, and allow them to trade up to the point. Then maybe you bring in a liquidator when all that is required is the chopping and getting rid of everything still, because that is all they do. There is no incentive for an administrator to do anything else but chop the assets, take their fees, ‘See you later. Next job, please.’

Senator WILLIAMS—You said you reported this to ASIC. One of my big concerns is the apparent lack of action of ASIC. It is something that has been right across our inquiries—not right across, but a lot of submissions have been critical of ASIC as a corporate watchdog in Australia. You said you reported in 2006 the actions of Mr Ariff to ASIC. Do you know of anyone else who reported earlier than 2006 about Mr Ariff?

Mr Doherty—I think that later on today there is Singleton Earthmoving. I think that they did. That was 2005 or 2004. I know that Carlovers did. I think everybody reported it to ASIC. There is no point; you do not get any response. The only response you get is once you get the press involved. Once it is on the front page then you get action.

Senator WILLIAMS—It is a pretty sad situation when we have to rely on the press to get our corporate watchdog to actually act. That is something that must obviously change in the future.

Mr Doherty—What chance do we have as citizens when the member Joel Fitzgibbon stood in parliament in August 2005 and basically—he did not beg—pointed out the rogue administrator? He demanded ASIC act. He could not get traction. What hope have we got? None, unless we have the press.

Senator WILLIAMS—In relation to the issue about the removal of liquidators, I would hope that a lot of people in this industry are straight and clean and do the right thing. I would hope that would be the case. Perhaps I am being a bit hopeful, but the removal of a rogue liquidator seems to be so difficult. I refer to the case of Carlovers. It cost them \$1.8 million in legal fees to have Mr Ariff removed, and then they put breath back into Carlovers. Do you have any suggestion or anything to add about how there could be regulations where a rogue liquidator could be removed more easily or at far less expense than the situation I just quoted?

Mr Doherty—It would be good if such a system could operate. Firstly, I admire your optimism. But, secondly, I think it would be good if such a system could operate. Unfortunately, what you need to do here is be very aware of how all of these little systems can be manipulated. Someone spoke earlier about having a vote of creditors, and the creditors could vote by value or by heartbeat—I think was the expression. If you have an administrator in there and he fears, ‘Hey, hang on, I have a problem here. These guys are going to vote against me’, he has the power to say, ‘Okay. I reject your \$1 million claim. I will give you a voting value of one dollar or I will reject it outright.’ He has got that power, but he can actually control the numbers, anyway. I agree with the idea, but the system needs some more in-depth thought.

Senator HURLEY—I think your in-depth personal understanding of the issue has meant that you can explain this very clearly. It does seem to me that one of the things you have emphasised is that there is a lot of cross-connection between companies involved in this industry, and that in itself is a significant problem. I think it is difficult to ban any kind of connection, but I think it is something we should have a look at. Would you agree that is one of the significant problems, that the valuer might be connected with the administrator?

Mr Doherty—Most certainly. If they have their own in-house valuer and auctioneer, they can basically achieve whatever value they want and they can auction the goods to whoever they want. Again, we come back to the mechanisms of how these things work. What can happen is you can advertise an auction but you do not put all the assets in the advertisement. Then you can have another party come in and he can bid up for all the items that are at the auction, but then he will disappear before the auction is finished and then it is up to the auctioneer to find the second bidder. Do you see? So, he can control what happens, and they do. Ariff did that with Tony Taylor, his auctioneer, in my case and Tony Taylor popped up at Singleton Earthmoving as well. It is corruption. It is simple corruption.

Again, Mr Ariff appointed an industry expert to my company, a guy by the name of John Mladineo. I was a powder coater. He was supposed to be an industry expert in powder coating. I wrote the trade course for powder coating. After about half an hour of talking to this guy I realised that he did not have a clue what he was talking about. But later on I discovered that Mr Ariff had used him as a representative of Stuart Ariff Insolvency Administrators at Juice Station,

and he was actually signing off under Stuart Ariff letterhead documents to Juice Station creditors. Also, some time earlier he had been operating for Mr Ariff through Star, Dean-Wilcocks with a company called Gal Body Trailers. It is a long, ongoing association.

Probably the best of them is a guy by the name of Gary Phillips. This one is a classic. Gary Phillips appeared at Singleton Earthmoving with a false proxy to act as a creditor. Ariff accepted it and Gary Phillips proceeded to control that Singleton Earthmoving creditors meeting in order to gain approval for Mr Ariff's appointment and his fees. That same Gary Phillips then went down to MDC Entertainment in Victoria as Mr Ariff's heavy, I suppose; the owner of MDC is a little girl of about 45 kilos. He pushed her up against the wall before Gary Phillips oversaw the removal of all the documents at MDC. I have CCT footage of this from the owner of the property. He handed the documents to the chief of the bikie gang. I forget which one, but one of the big bikie gangs.

Then you have got Gary Phillips appear at the Bulla Tip & Quarry as Mr Ariff's consultant. He called himself Engineer Corporate Solutions there, where he was paid a couple of hundred thousand bucks for essentially ripping off the company. Then he came to my company, Independent Powder Coating, where he was appointed as manager, where he misled the creditors in a number of areas. He also supervised a break-in—and I mean a break and enter—of my own property. Trucks arrived with cranes, 15 guys ripped the security fence out of the ground, snapped the padlocks off the buildings and started ripping the gear out. The police arrived after I called them, 'Oh, this is a civil matter.'

CHAIR—It certainly sounds amazing.

Senator PRATT—Your submission raises the issue of spurious litigation. Would you share with us any examples or experience you have had in relation to that? We have certainly had evidence to that effect about the consequences of litigation just for the sake of creating fees from it, et cetera. Could you give us your thoughts about that?

Mr Doherty—I will give you an example. Stuart Ariff used my company—because he would not do it under his own name—he used Independent Powder Coating to sue me, theoretically because I am supposed to have acquired assets that belong to Independent Powder Coating which had formed part of the break-in situation. That was really so that his mates could end up with the gear to add to other stuff that they acquired at five per cent of the value. He pursued me in court. I was incurring enormous legal bills. It was just getting totally out of hand and I was not getting anywhere, because he kept on changing the statement of claim—amended statement of claim, further amended statement of claim, further further amended statement of claim. I thought to myself, 'Hey, there is a bit of a strategy here.' What is happening here is he is trying to drain me dry. So, I said to myself that the only way I am going to do this is to defend myself, which I did. At the end of the day Justice Margaret Sidis in Newcastle court came to the conclusion that the litigation was in her words 'ridiculous' and chucked it out of court. I was awarded costs, but of course he never paid them. That is the way it goes.

Senator HURLEY—Isn't this precisely one of the problems of saying to ASIC, 'You must pursue all of these cases and take them to court'? The people in charge, the crooks, will just draw it out and you might not get any better resolution? What I am saying is that you are better

off trying to stop those people getting into the industry in any case rather than putting the emphasis on pursuing them.

Mr Doherty—It would certainly be great to tighten up the entry regulations, but then you also have to deter people when they do things wrong. There is no deterrence in what ASIC has achieved with Stuart Ariff, absolutely no deterrence whatsoever. He is no longer allowed to practise in the industry. Or, sorry, he is no longer allowed to become an insolvency practitioner. That does not mean he cannot work for another one. Both Star and Dean-Wilcocks were kicked out of the industry for periods of a year. Dean-Wilcocks actually reapplied and is now again working as an insolvency practitioner. John Star has not. He is now working as a corporate adviser, Star Corporate. But do you know what? They share the same office, level 2/32 Martin Place, Sydney. It is really succession planning. What Ariff will do is work for another one. Possibly his sister will become an IP, possibly one of his staff, Tina Battye or one of those guys, and he will continue to work in that industry behind the scenes.

CHAIR—Isn't that a matter of the registration authority dealing with that so that he is banned for life?

Mr Doherty—He is banned for life now, but I mean—

CHAIR—But that is from ownership. A real estate agent who no longer has a licence can work in an office but really run the place.

Mr Doherty—Yes, exactly.

CHAIR—And that is what you are saying would be the scenario with Ariff in this situation, and that surely is not in the public interest.

Mr Doherty—Hardly, but that is what will happen.

CHAIR—It is an anomaly that needs to be corrected.

Mr Doherty—Yes.

Senator WILLIAMS—On that very point, are you are saying that when Mr Ariff admitted to the 83 counts of wrongdoing he should not only have been scrubbed out as a registered liquidator but scrubbed out from actually working in the industry for life as well?

Mr Doherty—Yes. Also, ASIC should have pursued the criminal aspects of this. \$5 million is the tip of the iceberg. Just for those 16 companies that ASIC looked at my personal estimate would be \$20 million, maybe \$25 million. But then you have got the other 280. You are talking about massive fraud here, absolutely massive numbers, but nobody is doing anything about it. Why?

Senator PRATT—I want to return momentarily to the legal fees question. Do you know Mr Ariff's purported legal costs in pursuing? This is one of the issues that has been raised. Liquidators are doing spurious legal work without any real prospect of those actions actually

returning anything to creditors but largely just for the sake of generating the fees that will use up a proportion of the assets that remain.

Mr Doherty—In that case what actually happened was that he used the company name as the litigant. He used Independent Powder Coating versus me, William Patrick Doherty. As to my estimate of how much he would have spent on his solicitors and barrister—every time he fronted up at court with a solicitor and a barrister, which is quite good legal training actually—I would estimate somewhere approaching \$200,000 would have been his costs. But he did not pay them anyhow so it did not matter.

CHAIR—We thank you for appearing and for your submission.

[9.41 am]

GLEESON, Mr Paul, Director, Singleton Earthmoving

WOOD, Mr Bernard Nicholas, Director, Singleton Earthmoving

CHAIR—We now have a quorum so we would invite you to make an opening statement if you so desire.

Mr Wood—My colleague Paul Gleeson put in a submission. We are both directors of one company, Singleton Earthmoving Equipment Hire, which has been a victim of Ariff, and Singleton Earthmoving Pty Ltd, which Mr Gleeson is not a director of but I am. So I thought it was appropriate that I speak today, being more aware of the facts.

Bill Doherty has mentioned a lot of my case so I will not repeat what he has already said if I can help it. Singleton Earthmoving was a very successful company from 1981 up until 2004, the directors being my wife and myself. Due to a marriage break-up my wife wanted a way out, asking for an unreasonable amount of compensation. She got advice from her solicitor to go and see an administrator. Unfortunately she picked the wrong one. She went to Stuart Ariff, who convinced her to appoint him as the administrator of Singleton Earthmoving. Unbeknownst to me she could not do it and he advised her ‘to appoint somebody else as a director, to have a meeting and put me on board’, so that is what they did. It was found out later that this was illegal, that you could not do that.

I get a phone call from Mr Ariff to say, ‘I am your administrator.’ I think my situation is unique in the fact that we had a very, very successful business that was not under any pressure whatsoever. No-one appointed creditors. It was a good business. She pulled the wrong reign and got him involved. Later she told me that it was just a big bluff to force me to buy her out. Mr Ariff called a meeting and said, ‘I am the administrator’, et cetera. Creditors were unaware of what was happening because it is a small town in the Hunter Valley. We are all friends. There was never any money owing to anybody. Then he said, ‘We will have another meeting in a couple of weeks.’ A couple of days go by, I get a phone call from a secretary saying, ‘Mr Ariff is coming over to talk to you about the business.’ Fair enough. The business was still motoring along. He arrived at the office. He had bouncers, offsidars and auctioneers. He said, ‘I have got bad news for you.’ I said, ‘What is that?’ He said, ‘You are finished. We are closing you down. We are taking the assets.’ I said, ‘You are joking. It is a good business.’

At the same time he had planted low-loaders, bouncers et cetera, on mine sites seizing the equipment. Clients rang me and said, ‘What is going on?’ I said, ‘I do not know.’ I did not know what an administrator was. I thought he had political powers to do it. So they take the equipment away. In the group of companies I had 20 people employed at the time and we were effectively out of a job that day. My ex-wife was the first victim. I said, ‘Does she know what is happening?’ She appointed you.’ He said, ‘No, but she will know shortly when we take her car off her.’ The next thing I see her Grand Cherokee is driving down the highway to the auction yard.

He had the phones disconnected but, because the business was so strong, I managed to keep going. I had a shelf company. I got public liability and the clients said, 'Come back to work; keep your guys going.' It was very difficult but we did it. We have managed to keep going.

At the same time he was seizing assets from Singleton Earthmoving Pty Ltd he seized them from our other company, Singleton Earthmoving Equipment Hire, despite me protesting and saying, 'They do not belong to Singleton Earthmoving.' He said, 'It does not matter. They are going, too.'

The first battle that we had some months later was when Mr Gleeson and I went after Mr Ariff to get the assets back from Singleton Earthmoving Equipment Hire. That went to court in 2005. We were awarded back the machines which had been locked up for some eight or nine months. We were awarded damages and loss of income of over \$200,000. We have not seen a cent of that. Stuart Ariff then says, 'It was not me. I was acting for Singleton Earthmoving. I made a mistake.'

That is one point that has really upset me, why he is not personally accountable for what he does after he is appointed an administrator. Fair enough if things happen before he is appointed, he cannot be held personally accountable for it. But in this particular case he virtually stole machinery. I went to the police. They shrugged their shoulders—we only have one policeman in Singleton—and said, 'Oh, we cannot help.' He took the equipment. We were awarded the equipment back and an award was made for loss of income and legal fees, but we haven't yet seen a cent.

Once I realised what Mr Ariff was all about I wrote to ASIC early in 2005 in my own humble way. I am only a bulldozer driver, but I did. I wrote to them twice. I got replies back, 'Get legal advice.' As Mr Doherty mentioned, I went to my local member, Joel Fitzgibbon. He was appalled at what was happening to me. I was trying to hang onto the company. Ariff had virtually taken all the machinery away. He had collected some \$600,000 of our debtors' money and I was trying to keep going. Joel Fitzgibbon raised what was happening to Singleton Earthmoving in parliament and to do something about it called on the Treasurer to instruct ASIC to investigate Singleton Earthmoving and nothing happened—nothing at all happened.

It was only by joining forces with Carlovers, Bill Doherty and a group of us who got together and a lady from *The Australian* newspaper publicised it that ASIC then took notice. It was some three or four years later after Joel Fitzgibbon asked the Treasurer to instruct ASIC to help that ASIC then took notice. The rest is history. He was found guilty. He was booted out. We thought it was a great victory this past August when \$5 million was awarded to a group of us. He walked away. I am broke. I have not paid my IP insurance and we have not seen a cent.

We think should ASIC, not having done the right thing by us, be responsible to compensate us? I have lost the business, money, legal fees, et cetera, and that is where we are. I have managed to keep going. Because of the strength of the business I have managed to keep it going in my own way and I still employ the same people. But that is my story.

CHAIR—Going right back to the beginning, how was it that Stuart Ariff felt legally able to move in at the instigation of your wife? What role did she play in your company?

Mr Wood—She was a director. Singleton Earthmoving had two directors, her and myself.

CHAIR—Did she have superior rights to you? Was she a majority shareholder or something? How is it that he acted in that way on the complaint of one individual? What is the process involved in instigating an action like that?

Mr Wood—Her solicitor wrote to me and said, ‘Your company can afford to pay your ex-wife \$1.5 million’—which it could not—‘and if you do not pay it we will have no alternative but to go to an administrator.’

CHAIR—Should that not be through a court process, that sort of thing?

Mr Wood—I did not know. From 1980 when the company started we had equal shares in the business. I went through cancer. At the time it looked like I might not make it; for whatever reason it was suggested that I give her all the shares and keep one. That was not addressed in our separation—

CHAIR—So she was the majority shareholder.

Mr Wood—I just assumed that as the majority shareholder she could please herself what she does. As I found out later, she got the advice to go and see Stuart Ariff because Stuart is a good old boy who advertises on TV, ‘Come and see me if you need help with your business.’ So she approaches Stuart Ariff and says, ‘I want my ex-husband to buy me out. Can you help?’ ‘I can only help if I become an administrator.’ Obviously he is not going to agree to that. However, there is a way around it: ‘Appoint a friend of yours as a director’—once again unbeknownst to me—‘and then have a secret meeting and then appoint me as your administrator.’ That is how it was. That was one of my points to ASIC all the time. Why can’t you stop what is happening to me now? I have had legal advice that he is not a legal administrator, which is one of the charges that ASIC agreed with.

CHAIR—For them to do that they would have to have had a legal basis, would they not, like your company was trading while insolvent or something like that?

Mr Wood—That is the whole point. It was not.

CHAIR—The fact that you were not must surely have meant that the appointment of an administrator was not legal.

Mr Wood—It was not.

CHAIR—ASIC should have accepted that.

Mr Wood—They should have. That was in my very first letter—

CHAIR—Did you make that complaint to ASIC?

Mr Wood—It was in my very first letters that I wrote to them and all I got back was, ‘Get legal advice.’ That was the one thing that I thought that in a legal sense the appointment—ASIC said it was an effectual and legal appointment and then the only—

CHAIR—What did they say it was, ‘ineffectual’ or ‘in effect’?

Mr Wood—‘An effectual’, I think it was.

CHAIR—Surely if you were not insolvent and there was no legal basis for it—

Mr Wood—There was not.

CHAIR—you could have taken out some sort of injunction to stop it or ASIC could have done it on your behalf.

Mr Wood—I know they did it, but when somebody comes in and cuts off all your credit—

CHAIR—I understand.

Mr Wood—turns your phones off and you do not have any money—in hindsight when they rang our major client who owed us about \$300,000—good payer—and he said, ‘There is a guy out here putting his hand out for the cheque’, I thought, ‘I suppose you better give it to him.’ Had I known what I know now I would have said, ‘Don’t pay him.’ But you do not know. The only thing that I could find—it was all new to me; actually, it is not new to me because I had seen this fellow get hold of another colleague in Singleton that I was creditor of a few months previous to that. As I think I mentioned in my submission, once again, he collected about \$500,000 of the company’s assets and money—I have it here—and it just so happens that his expenses came to \$500,000. Nil. That is what happened when he finally did a wash-up of Singleton Earthmoving.

But the only thing that I could actually pinpoint that he had done wrong was, as Mr Doherty mentioned, he came to the meeting, he was there for a month. He came along with \$199,000 worth of fees for a month’s work to have it approved. This fellow sitting alongside me whom I had never seen before was dominating the meeting and saying that Singleton Earthmoving was no good, et cetera, and, ‘Stuart is a good boy and he will help out.’ He was moving motions, et cetera, and then he moved the motion that approved Stuart Ariff’s fees of \$199,000. Creditors there thought that this guy is there to help and some voted. They did not know what to do.

This guy then brings in his solicitor and a solicitor starts threatening me and the creditors and said, ‘If you do not approve his fees we will go to the Supreme Court and you will be up for more money.’ It was just by intimidation. We voted once, ‘No.’ Then after the solicitor threatened the people somebody capitulated—my ex-wife—and his fees were approved. This guy, Mr Gary Phillips, shot off out the door. I went out after him and could not find him.

I finally found out through the industry that he is an administrator colleague of Stuart Ariff’s. There was no proxy. He was there dominating the meeting. That was one of the other charges ASIC found him guilty of. The only money that was awarded back to me was those fees, the \$169,000 or whatever it was, because of this illegal vote.

CHAIR—I am not a lawyer but it sounds like a criminal conspiracy to defraud. I am surprised that ASIC did not provide you with better advice; that is all I can say.

Senator WILLIAMS—I find your case appalling. Correct me if I am wrong but your wife's solicitor said to you that you had to pay up \$1.2 million in a divorce settlement—

Mr Wood—It was \$1.5 million.

Senator WILLIAMS—and that solicitor said, 'If you don't we will put an administrator in'; is that correct?

Mr Wood—Yes.

Senator WILLIAMS—Is that a threat?

Mr Wood—Well, I thought it was bluff.

Senator WILLIAMS—The way I am reading you—and I do apologise if I am wrong—but I just think this is a case where you are just a hardworking man. You have gone through the suffering of an illness and you are probably ignorant of what your rights were at the time. When the solicitor said, 'If you do not pay up we will put an administrator in', did the solicitor have the right to say that? Was there any right to bring an administrator in when you have a perfectly good, running operation, making a profit, paying the wages? I just find this appalling.

Mr Wood—That is right. As I said, the business had been going for 20-plus years and the business was a pillar of society in Singleton. We shopped locally, employ, sponsor, et cetera, and then we had the businesses closed up overnight virtually.

Senator WILLIAMS—The \$199,000 sum that was awarded back to you; did you ever get it?

Mr Wood—No. That was part of this \$4.9 million.

Senator WILLIAMS—Did Mr Ariff actually take your dozers, your loaders, whatever and siphon them off into his company's name?

Mr Wood—No. At the time I believe he was in cahoots with the auctioneer because everything just went straight down to the auction yard.

Senator WILLIAMS—To Newcastle?

Mr Wood—To Newcastle. The National Bank had a charge over the company for some money that we had borrowed. I was advised then to borrow \$300,000 to become the secured creditor so I could get the equipment back. I borrowed that. Then Ariff then said, 'I will sell the machinery and pay you.' I said, 'No, I want the machines back.' The machines sat in the yard for some six months and then some cockamamie directors' loans that were fabricated said that I owed the company money and would offset it with that. It was not true. Eventually I asked for a tax return to be done and it was some years later that a draft tax return was done to show that the company owed me money, that I did not owe the company. However, he holds this machinery up

and he will not let it come back to the yard. He does a deal with the auctioneer; hang on to the Grand Cherokee, send this back and I finally got some of the machinery back.

In the case of Singleton Earthmoving Equipment Hire, those machines were locked up for six months. As I said before, we were awarded loss of income. We were awarded costs. He put his hand up and said, 'I made a mistake.' I was the one, as Mr Doherty mentioned, with the Wambo case—what happened at Wambo was that they were debtors of Singleton Earthmoving Pty Ltd. When Ariff got hold of the company he wrote to Wambo and said, 'Pay me whatever is owing.' And they did. They paid everything that was owing to Singleton Earthmoving.

I then started up in my own right. Some months later Wambo owed me money and they had not paid. I rang and I said, 'You have not paid me.' They said, 'Yes, we have.' Unfortunately the girl in accounts had hit the wrong button and shot this money into Stuart Ariff's Singleton Earthmoving account instead of to me and he would not give it back. Wambo said, 'We will fix you up. Here is another cheque for \$30,000. We go after Mr Ariff and get our money back.' That is when that went to court and he was found negligent then.

His organisation gave him a \$20,000 fine and a slap over the wrist. He would not hand the money back. It was just a mistake, an internet mistake. It was money owing to me but it went into his account and he would not hand it back.

Senator WILLIAMS—The organisation fined him \$20,000. How much money was involved in this?

Mr Wood—About \$30,000.

Senator WILLIAMS—I feel very sorry for you. I think you have been—

Mr Wood—Well, mine is a case where it was a good business. I was just sailing along okay when my ex-wife had a rush of blood and pulled the wrong reign as a threat to me and Mr Ariff took over. When the guys came to the house that day, I said, 'Look at these guys. I have got all these fellows working for me. Some of them are well into their sixties. They have white faces.' He said, 'I do not care.' And they were all effectively out of a job. But because of the strength of the company and because we had been going for so long all the creditors said, 'We will still give you credit, Bernie.' The clients said, 'Just try and keep going. Borrow machinery; beg. Just keep going', and I have managed to keep going these six years. It has been difficult, but I keep going.

Senator WILLIAMS—Are you getting in front?

Mr Wood—Not really. Not really. I would be if I could get the \$190,000. That would give me a boost along. It is ironic that in my pleas to ASIC to help, to help and help were ignored and yet I came back from New Zealand recently and I have not paid a \$40 fee for my superannuation company and I am now feeling the full force of ASIC over \$40—the full force of it. I wrote to them and said, 'This is why you are getting such bad publicity.' You know they have bumped the fee up to \$65 because I did not pay it the first month. Now there is a \$205 fine for not paying \$40 and all these threats from them. That is about all I have got to offer.

CHAIR—I wonder myself whether you should talk to the New South Wales fraud squad because this sounds like a criminal matter to me.

Mr Wood—The same Gary Phillips now sits on the One.Tel creditors committee—the same guy.

Senator PRATT—That is quite a story. The role of a liquidator is supposed to be to find and protect the assets of the company on behalf of the creditors to realise those assets, conduct investigations into the financial affairs of the company and any suspicious transactions, to make appropriate recoveries, make distribution to creditors and to shareholders if there is a surplus and to apply to deregister the company after which a company would under those circumstances cease to exist. But it does not sound like your company should have been a target for administration or liquidation at all.

Mr Wood—No, it should not. I know a lot of companies get into strife but mine was not. I had never heard of a DOCA in the past. I did not know what a DOCA was. But I took into account, okay, I will take over; I will fix everybody up and Ariff said, 'I want \$60,000 fees', for the first week's work virtually and was going to include that in the DOCA. After a lot of toing and froing before I was about to sign it I got a letter from his solicitor to say, 'No, his fees have gone up to \$239,000.' Obviously then I had to pull out of the DOCA. But in my case, no, they don't—or anybody.

I have been involved in a couple of administrations since. The first two or three pages of any circular are to say how much we are going to charge you people. They are outrageous fees: \$450 an hour, \$120 an hour for a secretary.

Senator PRATT—How do you distinguish between what might be fair payment for what can be a difficult job? Fees that are a bit on the exorbitant side and might be kind of bringing in assets really to line the pockets of the administrator or liquidator versus the kind of outright corruption that certainly took place in some of the examples we have heard this morning?

Mr Wood—I have only been involved in three or four, so I cannot speak for a whole industry but the three or four that I have seen are fairly corrupt. So when you get to those statistics there must be a big problem.

Senator PRATT—In that sense are you arguing it is a pretty slippery slope between administrators being able to absorb the assets of what they are liquidating on the basis of their fees to the kinds of activities that Stuart Ariff was undertaking?

Mr Wood—I think so. There is no way that Stuart Ariff could run an earthmoving business. What would he know about bulldozers? To say that he was going to trade or whatever, how would they? They have no experience. They have no experience of running a business. I have a son in the industry and the feeling is that they look at a company: 'What's in it for me?' The best way is to sell the assets and get the money. I really believe that.

Senator PRATT—But they are supposed to be there to protect the assets of the company and realise those assets so that as much money as possible can be returned to the creditors, surely?

Mr Wood—I suppose in a case like mine if the business had gone bad, okay, they had better grab the assets before they disappear. A lot of things can disappear very easily. If someone dies, the shed's emptied out smartly before anybody can see. In my case if the business was bad, sure, his obligation would be to get all the assets to protect them. In my case there was about 30 pieces of earthmoving equipment. But in this particular case, I have a letter that he wrote to the bank when he was suing me before the ink was dry on his appointment—the illegal appointment of an administrator—he wrote to the bank and said, 'I am virtually now the owner of Singleton Earthmoving and I have stopped trading and I am selling the assets.' This was before the first meeting.

Senator PRATT—So if you were a creditor owed money by a medium to small sized business who should you be more scared of, the small business that you are worried might squirrel your assets away because they fear they might start trading insolvent and basically they are going to have protect as many of their own personal assets as possible versus the liquidator that is supposed to be there to protect and get as much of that asset out to return the debt to you? Who would be more scared of?

Mr Wood—It starts off with him as the administrator and then he becomes the liquidator, the same guy. I would be more scared of him.

Senator PRATT—That has been a recurring theme in the evidence that we have heard over the last few days. Thank you.

CHAIR—That concludes this session. Thank you very much. This was a very sad story.

Proceedings suspended from 10.09 am to 10.43 am

WILLIAMS, Mr Ronald Frederick, President, Adamstown Rosebud Sport and Recreation Club Co-op Ltd

CHAIR—Welcome, Mr Williams. Would you like to make an opening statement?

Mr Williams—Yes. Good morning, senators. The Adamstown Rosebud Sport and Recreation Club includes the Adamstown Bowling Club. I joined the board in 2003-04 and after we had our first financial report it was obvious that we were trading insolvent. Our auditors at the time recommended we keep trading even though they knew we were insolvent. The ramifications of that for the board were not very positive of course, so we looked for other advice. We were looking for somewhere to go and went to the Yellow Pages and found an ad for Mr Stuart Ariff. He was the only one in there at the time who came up with company restructuring, administrations and assistance to get out of any trouble that they were in.

We went to see Mr Ariff and the first thing he said was that we should go into voluntary administration. This we did. We met with the board. Mr Ariff dictated a motion to the board which the board passed and appointed Mr Ariff as administrator. A company deed was drawn up by Ariff with the creditors. The debt at the time was only \$300,000-odd so we were pretty small-fry overall. The deed went for four years for \$4,000 a month and each month we religiously made that payment—never failed. There was one time it was claimed to be late which we were not, and they were on the doorstep wanting the cheque.

We had no trouble with the company with Ariff up until the time when there was a newspaper report stating that Ariff was in trouble with ASIC about fees with Carlovers, in particular. At this stage we were concerned. I rang ASIC just for information as to where we stood with the charges being laid against Ariff. I was told to put a complaint in online. At the time it was not a complaint, it was more of an inquiry as to where we stood and what to do. But we put a complaint in on behalf of our staff mainly querying about staff entitlements and what would happen to them. We got a standard reply back acknowledging the complaint. A week later we got a formal reply to say that because we were a cooperative they did not want to know us and that we should go and see the Office of Fair Trading or get legal advice.

We let that go until September when the newspaper reports again stated that Ariff's licence to act as an administrator was cancelled. Our secretary then contacted the Department of Fair Trading to see where we stood. She was told that we must appoint another administrator. I was not happy with that, so I rang the co-op myself and they said the same thing: that we had to appoint another administrator. Then they said, 'Put a complaint in online', which I did so I got it back in writing from them. Have you ever tried to put a complaint in online to any of these people? It is not easy.

We then tried to appoint another administrator. We went through the phone book and picked out another one, Jirsch Sutherland. After about a month we managed to get one of their representatives to come to our board and he gave us a spiel saying that we had to get another administrator appointed through the courts. He also told us there was no money left in Ariff's account, that all his records had been destroyed and not to do anything until the creditors chased us. That was not acceptable. We were virtually going around in circles. I think that mainly

because there were reports in the newspaper on the plight of the club we got a bit more attention. I was contacted by several people, including Mr Bill Doherty, a couple from Sydney and a few other people who had been in the same position with Ariff. I also sent emails off to various ministers and the Department of Lands, to whom we owed money, the tax office and eventually the Office of Fair Trading contacted us. They came back and did a mini-audit of us. They verified that we had made all the payments up to date. All payments had been made bar the last two which were outstanding at the time of Ariff's disbarment. We did not make those last two payments. We were telephoned by one of Ariff's employees not to make those payments as well. I do not know his name.

From then on we were just in limbo. We looked like we were going to close because we were also told that because Ariff had not paid the moneys we were still liable to pay that money back because of the way the deed was arranged, which we could not do. We could not afford to get legal advice. Everyone we spoke to could not tell us what to do or where to go.

Eventually the Office of Fair Trading did come to our assistance and they have gone through us now. I also made a complaint to the police of fraud and theft and the police are now looking into it. I have just been advised that they are trying to trace through the bank accounts where the money has gone to out of Ariff's accounts. I was advised yesterday that the Office of Fair Trading have now appointed another administrator on our behalf and that will be sorted out in the next few days, I hope. Because of all this involvement happening just before the end of the year we have lost about 50 or 60 bowling members, which has really knocked down the income of the club, so whether or not we survive remains to be seen. We are still battling.

I still think, as Mr Doherty remarked, if it had not been for the press and the attention we got off the press I do not know where we would be, whether any action would have been taken at all.

CHAIR—Thank you very much for telling us about what has happened to you. You said ASIC was not prepared to assist you because you are a cooperative?

Mr Williams—That is correct, yes.

CHAIR—What are the legal implications of being in a cooperative that exclude you from ASIC's attention, do you know?

Mr Williams—Apparently ASIC only look after registered companies whereas being a cooperative we come under the state government, the Office of Fair Trading.

CHAIR—They were not prepared to help you either, I see.

Mr Williams—Initially, no. They just told us, because we appointed the administrator in the first place, to go and appoint another administrator ourselves, which we could not afford to do.

CHAIR—How would you like to see the system changed so that a group like yours could end up with a more just outcome?

Mr Williams—The whole system needs to be revised I think so that a fairer or a more positive response to any complaints be looked at instead of just being told to refer off and do it

yourself. You get boards like us of small clubs where business expertise is limited and small boards like us need guidance from other people.

CHAIR—You need an advisory service that you can ring and talk to.

Mr Williams—Most definitely.

CHAIR—That is a very good point.

Senator WILLIAMS—Correct me if I am wrong, but some time back when I read your submission were you making payments to Mr Ariff who then had to forward the payments on to reduce your debt; is that your case?

Mr Williams—The deed of arrangement was that we made our monthly payments into his account by cheque, or we posted him a cheque and he would deposit it into whatever account that he did. He took out his initial disbursements and no payments to creditors were to be made until September 2009, last year.

Senator WILLIAMS—Was the situation though that you had made payments for 10 months and only had two months to go, or something, and it all fell apart; is that right? Was that your case?

Mr Williams—That is when it fell apart, that is correct.

Senator WILLIAMS—For those 10 months you were making payments against the principal of debt of the club; is that right?

Mr Williams—That is correct.

Senator WILLIAMS—You made those payments to Mr Ariff but he never paid them off your debt; is that correct?

Mr Williams—That is correct.

Senator WILLIAMS—You thought for that period of 10 months that you were probably working very hard and you are obviously very committed to your club and you wanted to survive?

Mr Williams—Yes.

Senator WILLIAMS—You made those payments for 10 months assuming—

Mr Williams—Four years. We paid those for four years.

Senator WILLIAMS—You assumed that he would forward on those payments to reduce your debt of the club?

Mr Williams—Yes, clear us of administration, yes.

Senator WILLIAMS—He never forwarded any of them on?

Mr Williams—None whatsoever.

Senator WILLIAMS—With two payments to go from your club you realised that nothing had been paid off your debt?

Mr Williams—Yes. I am sorry, no. At that time, no. We did not know because actually at that time the debts were not to be paid until September. This was all in about August when he was disbarred.

Senator WILLIAMS—As I have said before, we are not a court. Obviously each of us here has our own personal opinion about things. We are legislators and we have to look to see what can be changed in legislation to make this industry better, because obviously it needs some serious change. There are rogues out there. There are people that I personally would not like to know out there.

Let us look at the corporate watchdog, ASIC. How would summarise your response from ASIC?

Mr Williams—Negative.

Senator WILLIAMS—They simply say, ‘Look, you are not a corporation, therefore you are nothing to do with us.’

Mr Williams—Exactly.

Senator WILLIAMS—Let us go to the Department of Fair Trading in New South Wales; what reaction did you get from them?

Mr Williams—Also negative. Go and get legal advice and appoint yourselves another administrator.

Senator WILLIAMS—How do you classify your club? You are not a corporation. You are not a company. What are you?

Mr Williams—It is a cooperative.

Senator WILLIAMS—Under your cooperative is it not under the state laws to see that the laws are enforced? Is it not under the Department of Fair Trading to see that under your cooperative if someone is doing something wrong they should be the corporate watchdog over your property?

Mr Williams—That is correct, which is what the Office of Fair Trading is supposed to be all about, yes.

Senator WILLIAMS—Have you taken it to your local state member?

Mr Williams—We did, yes, Miss Jodi McKay.

Senator WILLIAMS—Did you get any reaction?

Mr Williams—We did.

Senator WILLIAMS—Did she raise it with the department?

Mr Williams—I do not know. I do not know who she raised it with, but we did get reactions, yes.

Senator WILLIAMS—Any positive reaction?

Mr Williams—Yes.

Senator WILLIAMS—Did the Department of Fair Trading pursue Stuart Ariff?

Mr Williams—I do not think so. I do not think anyone has pursued Stuart Ariff. I believe the Department of Fair Trading have organised within the Supreme Court to get a change of administrators, which were appointed yesterday. Mr Paul Gidley has been appointed through the court by the Office of Fair Trading.

Senator WILLIAMS—You paid Mr Ariff moneys and he was supposed to pay off your debt; is that correct?

Mr Williams—That is correct.

Senator WILLIAMS—He did not pay it off the debt; he kept it.

Mr Williams—He kept the lot.

Senator WILLIAMS—Isn't that theft?

Mr Williams—Definitely. That is why we reported it to the police. It was theft or fraud—either way, yes.

Senator WILLIAMS—Embezzlement or whatever you want to call it.

Mr Williams—Yes.

Senator WILLIAMS—That is a criminal offence. Why has the state not taken the issue up on that very issue as a criminal offence.

Mr Williams—They have now, I believe. I have a letter from the minister that the local police authority is investigating. It took about three months to get a response. It was slow but the local

detectives are checking. They took out a search warrant and they got the account that our cheques have been paid into and they are now going through the banks to get a statement to find out where the moneys went to from Ariff's account.

Senator WILLIAMS—I would take this back to the minister for the Department of Fair Trading—

Mr Williams—Yes, I have said that—

Senator WILLIAMS—There has obviously been a wrongdoing done. Of course, everyone is innocent until proven guilty, but there is obviously a very strong case of wrongdoing and you would think that the minister would recommend to the DPP to take appropriate action.

Mr Williams—I fully agree.

Senator WILLIAMS—I would expect that to happen but perhaps that did not happen.

Mr Williams—No, it did not. It surprised me that nothing has happened. We are probably too small. The amount of money that we are missing or has been stolen from us is insignificant for the department.

Senator WILLIAMS—Whether or not it is small it is still a criminal offence if you steal money, no matter whether it is one dollar or it is \$100 million it is still an offence and you would expect the appropriate authorities to take action on that.

Mr Williams—I fully agree. I did bring this up. I sent emails to the minister of police, the Premier of New South Wales—there are that many I have forgotten them—confirming that it is a theft, or fraud, and apart from stealing the money from us in the first place they have also stolen the money from the government, which is the Department of Lands. They stole \$45,000 off them. They have also stolen money from the tax department, not us.

Senator WILLIAMS—This is an issue for this committee obviously when it comes to cooperatives, et cetera, that perhaps when we hand down our recommendations it should be considered by the committee to notify the state departments of fair trading saying: perhaps you need to tighten your regulations when it comes to liquidators, administrators, et cetera, with the cooperatives?

Mr Williams—Most definitely. From what I understand we are the first and only cooperative to be in this situation.

Senator WILLIAMS—I wish you well. I hope your club survives.

Mr Williams—We are trying. We have cooperation now from the Office of Fair Trading. They have actually been very good. They have been in contact with ASIC and are apparently working together. Now we are working with the Department of Lands and the local state member, Jodi MacKay, trying to work something else out to go forward.

Senator WILLIAMS—Good luck with it.

Senator PRATT—I want to ask you about your interactions with ASIC. Clearly it appears that they do not have jurisdiction by virtue of the fact that you are not a corporation.

Mr Williams—True.

Senator PRATT—But you would think that if your complaint was corroborating other complaints that had also been made to some extent ASIC would have an interest in the way he was conducting his affairs within your co-op.

Mr Williams—That is what I fully expected. That is why initially I framed them as an inquiry to say, ‘Where do we stand? Do we keep payments up? Where is our money going?’ But I was just told straight out to put a complaint in online, which was a negative reply virtually: ‘Go elsewhere.’

Senator PRATT—You were also informed that you were not advised of Stuart Ariff’s demise as your administrator. I am a little bit confused about whether because you are not a corporation the extent to which you were obliged to put yourselves under administration as a club or not. Clearly you felt like you had a moral obligation to do that as a way of—

Mr Williams—Initially when we went into voluntary administration?

Senator PRATT—Yes.

Mr Williams—The way we were trading we could not afford it. The interest on the debt that we owed the tax office and the lands department was killing us. We just could not continue trading.

Senator PRATT—Administration is supposed to be about cleaning up bad administration so that you can return to being a viable and ongoing entity.

Mr Williams—That is exactly what I thought.

Senator PRATT—It would seem complete anathema that you would go from bad practice that you were clearly struggling with, with good intention, as a club to kind of go, ‘Okay, we have to clean ourselves up’, to then being completely rorted?

Mr Williams—It was only at the end when we were shafted.

Senator HURLEY—Clearly the board acted ethically. They saw there was a problem. They took logical steps. There was an audit and then you took logical steps to go to the voluntary administration, so you acted quite properly throughout the entire process.

Mr Williams—I believe we did. We went to get advice from someone we considered a professional accountant specialising in helping companies in financial trouble.

Senator HURLEY—I am just wondering about any other board that might find itself in this position. Is there any state government or federal government sponsored advisory body? I am

thinking of the Enterprise Connect people for private business that can assist companies with running their businesses. Is there anything similar for community organisations?

Mr Williams—Clubs New South Wales I believe does provide a service for struggling clubs to put something in place, yes.

Senator HURLEY—Is that financial advice? If you had foreseen in the early stages that there was going to be a problem, could you have gone to them for legal advice?

Mr Williams—They do provide a legal service but it comes at a cost. There are always options in hindsight.

Senator HURLEY—Exactly. That is why I emphasise that clearly you did the right thing. You expected to get good professional advice and in fact—

Mr Williams—When you are in legal trouble you go to a solicitor.

Senator HURLEY—Exactly.

Mr Williams—We were not happy with our auditor at the time, so we went elsewhere.

Senator PRATT—Your submission raises the fact that you started with Mr Ariff and then you realised you were having problems, so you contacted a local insolvency company only to find that that company had links back to Stuart Ariff; is that correct?

Mr Williams—That is right. That is what the Office of Fair Trading told us, to go and appoint another administrator. Again, in the phone book Jirsch Sutherland came up as specialists in administrations.

Senator PRATT—How did you discover Jirsch Sutherland and the link back to Ariff? How did you discover that again?

Mr Williams—Mr Bill Doherty knows the manager, which is Tina Battye, which was—

Senator PRATT—Only by other people who had been burnt were you able to discover—

Mr Williams—Mr Doherty gave me a lot of information from people who had been burnt, yes.

Senator PRATT—Finally an accountant was able to refer you to another insolvency firm called Paul Gidley of Gidley Insurance; is that right?

Mr Williams—I have a very good friend in Newcastle in business. He referred me to his accountant for advice and to his solicitor who gave me some advice as well which went back to his accountant and the accountant recommended Paul Gidley.

Senator PRATT—Are you satisfied now that you are receiving appropriate advice and service?

Mr Williams—Yes, I am quite happy with Mr Gidley. He is excellent, yes. The fees are still high, I believe.

Senator PRATT—I am sure they are.

Mr Williams—I do not know how much it is going to cost us yet. That is still the worst part of it. To meet our requirements we had to sell three poker machines to pay off our current debt to the lands department and the tax office to clear those debts and the remaining \$8,000 to be paid to complete the deed of arrangements, so I do not know how much more it is going to cost us. It is going to annoy me if we have to pay any more.

Senator PRATT—It would seem to me that regulatory institutions should really be making sure that all of these firms were at the very least up to the minimum standard. Perhaps you have finally somewhere reliable in Gidley & Shaw. How is it for you as a consumer of these services already in a vulnerable position to try to make your way through this quagmire?

Mr Williams—It is like turning around in circles. You have to try to employ somebody that you can trust. Unless you know somebody or have a recommendation, it is hit or miss, I suppose.

Senator PRATT—One of the things that has been put to us as a committee is how difficult it is. In a general sense people are usually only consumers of these kinds of services once in a lifetime and that therefore it is a true situation of buyer beware in terms of a capacity to really understand what you are getting yourself in for.

Mr Williams—It is true that if you do not know where to turn you have to find somewhere to go where you can get an honest answer, yes.

Senator PRATT—In your view would that put the onus back on the regulators to make sure that the industry as a whole is up to standard?

Mr Williams—I would say so, yes.

Senator WILLIAMS—Just out of interest, you said you had to sell off three poker machines. How many do you have left now?

Mr Williams—Thirteen.

CHAIR—What do you sell a poker machine for? What sort of price do they attract?

Mr Williams—The entitlement of a licence is about \$60,000 because you have to sell them in groups of three.

CHAIR—Are they each \$60,000?

Mr Williams—No, for the three.

CHAIR—They are \$20,000 each.

Mr Williams—It depends on whether you are in the club industry or the hotel industry. You cannot sell between the two, unfortunately.

Senator WILLIAMS—For the hotel industry it is a lot more though—

Mr Williams—Yes.

Senator WILLIAMS—It is about \$120,000 a machine.

Mr Williams—Yes. I would have loved to have been able to do that. When you sell three the government takes one.

CHAIR—In tax do you mean?

Mr Williams—No, when you sell three licences the buyer only gets two and one is taken out of circulation.

CHAIR—Thank you. Your evidence has been very interesting.

[11.10 am]

FONG, Mr Ian Kim Seng, Authorised Representative, Carlovers Carwash Limited and Berjaya Corporation Berhad

CHAIR—Welcome, Mr Fong.

Mr Fong—Thank you.

CHAIR—Would you like to make an opening statement?

Mr Fong—Yes. Firstly, thank you for the invitation. I will try to keep this short.

CHAIR—You do not have to keep it short. You can tell us what you want us to know. You do not have to constrain yourself.

Mr Fong—I do not think that I will go over old ground regarding our experience with the insolvency industry. It is quite well known to everyone. Based on that experience I have three observations to make. Firstly, you have an unregulated system that is badly broken. The fact that it has taken ASIC four years to act on a case where a simple and straightforward administration has cost \$10 million, where not a single cent has gone to the creditors and where the administrator and his lawyers are likely to get away with it, says it all.

Secondly, the current system is very costly and inefficient. The fact that fees to liquidators and lawyers usually equal what is recovered with no return to creditors, again, says it all. You need to introduce a fixed price regime or introduce more competition to reduce costs.

Thirdly, I am amazed that there is no effective criminal justice system or harsh penalties to deal with white-collar crime. You have given incredible amount of powers and trust to a profit making industry and you do not back it up with a proper justice system or harsh penalties to deter abuse or misconduct or white-collar crime. To say the least, it is a disgrace.

In the case of Mr Ariff, ASIC continues to fumble. Mr Ariff is yet to be charged and the victims are still waiting for restitution and justice to be done.

To conclude, it is just not good enough. No-one has confidence in the system other than the liquidators themselves. I think too many people have already been harmed to say that this is the work of just a few bad apples and I implore you, our leaders, to rebuild a complete system. Thank you.

CHAIR—Thank you. I think what you have said resonates with us because we have certainly become aware that there is not a system effectively prosecuting these white-collar criminals, and we certainly see that as a major deficiency in the entire system. We are also concerned that ASIC does not seem to follow through with complaints about smaller companies and that issues under \$10 million do not seem to attract a lot of attention from them. What would you like to see put in

place? What we have to think about is how to change the system. What would you suggest be considered that we could recommend to the Senate?

Mr Fong—Firstly, you need better regulation. ASIC needs to work harder to listen to people. At the moment any complaint is dealt with on a discretion basis, which goes to show there is no system in place. Secondly, to deal with the high cost you should introduce a fixed price regime or introduce competition. Thirdly, you can have the best regulation in the world, but if you do not have a system of harsh penalties people can continue to breach these regulations because they know that they will get away with it. It is just a slap on the wrist. At the moment anyone can steal money and spend a year or two at a prison farm, milking cows and learning arts and crafts. How does it deter abuse and misconduct?

CHAIR—They are good points, the need for more regulation. That is something that we have thought about, as well as the registration of insolvency practitioners and how their registration is renewed, giving some sort of registration board the power to discipline or suspend their right to practise and requiring them to have ongoing education. They are things that we have considered. The fact that ASIC's actions are discretionary is obviously a matter of concern. We have heard too many stories of people ringing up or sending in emails and then nothing happening. We think that is a very good point. Stronger penalties are a very serious matter to consider. I think white-collar crime is not taken seriously enough. They are all good points. Senator Williams.

Senator WILLIAMS—Thank you for your presence. Did it cost your company \$1.8 million in legal fees to get rid of Ariff as your liquidator?

Mr Fong—It has, and unfortunately it is going to cost even more, because up until now there are still a few unresolved issues that need to be dealt with and no-one will help us.

Senator WILLIAMS—Would you like to expand on those issues or would you rather keep them to yourself?

Mr Fong—No, it is a matter of public record. Mr Ariff continues to hold a charge over the company.

Senator WILLIAMS—Today?

Mr Fong—Yes, because the release of a charge needs to be dealt with within the justice or court system and as you know, the process takes a long time—12 months to two years—and is very expensive.

Senator WILLIAMS—How do you see us, as legislators? What rules do you think need changing? We have a situation where you have a shonky liquidator taking control of your company and yet it is so hard to get rid of him. How do you see a solution to that? If the majority of creditors had a vote to remove a liquidator would that be a just and fair thing or would that be giving too much power to the creditors?

Mr Fong—I do not think so. Using our case as an example, if we were able to vote him out say four years ago when we discovered his abuse, then it would have saved the company close to \$7 million and it would have helped his other victims avoid similar damage.

Senator WILLIAMS—That is exactly the point I raised with ASIC during Senate estimates. When did you first report the activities of Mr Ariff to ASIC? Can you recall?

Mr Fong—It was in 2005.

Senator WILLIAMS—He was not scrubbed out from practise until August 2009.

Mr Fong—Correct.

Senator WILLIAMS—During that period he continued to fleece money out of companies such as Singleton Earthmoving and the disgraceful treatment of many other companies.

Mr Fong—Correct.

Senator WILLIAMS—Mr D'Aloisio told us at estimates that it is very difficult to deregister a liquidator. I see this as a serious problem. I will put an idea to you and ask your opinion of it. What if a liquidator was licensed and had to renew their licence every year or two, sit for a test, and you had a situation where ASIC could just suspend that licence overnight? It would be a matter of a phone call. If they have substantial evidence in front of them that there is wrongdoing being carried out then that, in itself, would first of all allow ASIC to stop someone practising overnight, which would have been good in the case of Ariff. That would make the industry well aware that if you do wrong things then you can be frozen overnight, stopped from practising and then as the court proceeds on—it might take a year or two—if you are innocent you can go back to your practice and if you are guilty, of course, you face the music.

This is the problem I have in relation to you, especially. I have quoted you through many of our hearings about how it cost you so much money to remove him and how much money it cost your business. We, as legislators, must look at something that at least gives the power to ASIC to act on someone without having to go through the long, expensive drawn-out court case system to get a result. As I said, Mr D'Aloisio told us at estimates that it is very hard to deregister a liquidator. Would you like to add something to that?

Mr Fong—I think giving ASIC more powers and more resources would be good. It certainly seems from my experience that they were hamstrung in many things that they said they would do, but could not do.

Senator WILLIAMS—Can you give an example of that? Did ASIC say to you, 'We're hamstrung. We can't act here'? Is that your personal experience?

Mr Fong—Yes.

Senator WILLIAMS—Can you give me some examples? You obviously said to ASIC, 'Here's the problem. He's doing this. He's taken this. He's frozen that. This money has disappeared.' You have obviously said to ASIC, 'Will you act?', and they have said, 'Because of this rule or that rule we can't act.' Can you give us an example of that?

Mr Fong—An example that comes to mind is that after we got the company back and before Mr Ariff was put through the courts he sent, on two occasions, negotiators and mediators to my office to intimidate me and my staff.

Senator WILLIAMS—Did he seek mediation with you or did the court rule that there should be mediation?

Mr Fong—They were basically henchmen. Do you know what it feels like to have your personal security threatened?

Senator WILLIAMS—Would you elaborate on that, please?

Mr Fong—On the first occasion he sent two big, giant guys.

Senator WILLIAMS—Bigger than you?

Mr Fong—Twice or three times the size of me to our offices.

Senator WILLIAMS—And you saw that as intimidating?

Mr Fong—Of course.

Senator WILLIAMS—Go on.

Mr Fong—We complained to ASIC and they said that they could not do anything. They were hamstrung because it is not within their powers to act. They advised me to go to the police.

Senator WILLIAMS—Did you?

Mr Fong—Yes, I did.

Senator WILLIAMS—Any reaction from the police?

Mr Fong—They just keep a tab. Until I actually get hurt they cannot act.

Senator WILLIAMS—It is a bit late in the day for that, isn't it?

Mr Fong—The second time they sent another big dude to our office. Again, he intimidated our secretary, a woman.

CHAIR—What do you mean by 'intimidated'? Did they threaten them? What actually happened?

Mr Fong—They say they want to talk and they want to come to my house to talk. You have no idea; for the police to come to my house and I have got to explain to my three young kids why the police are in my house. It is crazy.

Senator WILLIAMS—Were these people employed by Ariff?

Mr Fong—They said they were acting on behalf of Mr Ariff.

Senator WILLIAMS—A bit scary.

Mr Fong—I think so, and yet ASIC will not act or at least protect.

Senator WILLIAMS—Let us get back to the regulator, ASIC, and the regulation of the industry. I would like to take you to two areas. We have ITSA that is a regulator of personal insolvencies, bankruptcies and so on. We have ASIC under the Corporations Act. We have the Department of Fair Trading under cooperatives. In this whole insolvency industry do you think it would be a good idea if it was all brought under one umbrella? If we took the 30 or 40 employees out of ASIC that handle the IP industry, ITSA and so on, under one umbrella with the same set of rules for companies and individuals, perhaps an ombudsman and perhaps a flying squad to inspect and audit fees and charges of the industry, do you see that would be an improvement to the industry?

Mr Fong—Yes, I would. Setting up small, nimble, flexible independent teams would certainly help. In my opinion, at the moment there is too much bureaucracy within ASIC. Nothing moves.

Senator WILLIAMS—What role do you see the industry representatives playing? In this case it is the Insolvency Practitioners Association. You become a member of an association when in a particular field, so what should be the role of those industry leaders and representatives?

Mr Fong—At the moment I do not think they play any role. They are nothing more than marketing organisations for the insolvency industry. They are there to promote insolvency practitioners and nothing else.

Senator WILLIAMS—Just going to the fees of Mr Ariff, did you ever get a list of fees of his charges, how much he charged per hour and so on?

Mr Fong—Yes. We got 27 files of it.

Senator WILLIAMS—How much an hour was he charging?

Mr Fong—I am not sure, but it was expensive. To put something trivial into this, one of his staff charged \$60 for reading an article in the newspaper about him. When we first broke this story to the media *The Australian* published an article. His staff charged \$60 just to read an article about his boss doing something wrong.

Senator WILLIAMS—If we charged \$60 every time we read an article we would be millionaires.

Mr Fong—I think so.

Senator WILLIAMS—That is terribly frustrating for you. I sympathise with what you have been through. Hopefully this committee will make substantial changes for the better for the whole industry. Thank you.

CHAIR—Senator Hurley.

Senator HURLEY—During this whole process I am concerned by the number of people that have said that when they began the process, when there was some stress because there was financial stress on the company and personal stress on the directors, that there does not seem to be much assistance once they went into any kind of administration or voluntary administration and that there was not more information provided to people about what their rights and responsibilities were and what the rights and responsibilities were of the insolvency practitioners—

Mr Fong—Correct.

Senator HURLEY—and where to go for assistance and how to do that?

Mr Fong—Correct.

Senator HURLEY—Just to confirm, there is no booklet or any website that you were pointed to, or anything that provided that kind of information.

Mr Fong—I think there are websites and there are articles that do set out your rights and obligations, but they are very hard to read or very hard to interpret. The people that are most vulnerable are small to medium business owners and creditors. We are not as well educated as the professionals who have their tertiary degrees or professional degrees. We come from the school of hard knocks.

Senator HURLEY—Yes. In most cases companies or boards seek some kind of legal advice but, of course, that is an expensive proposition.

Mr Fong—Correct.

Senator HURLEY—Particularly if you are a small or medium business where you do not have much money to continue to get that professional legal advice.

Mr Fong—Correct. We rely on trust and dialogue to do business.

Senator HURLEY—Exactly. It does seem to me that there is a gap there that if you go to get advice about administration or insolvency from either a legal practitioner, an accountant or business adviser there should be some obligation for them to provide you with some information about what happens if things go wrong.

Mr Fong—Correct.

Senator HURLEY—That is one glaring thing that is absent here.

Mr Fong—Yes.

Senator HURLEY—In that vein, in your submission you make a point about the government establishing and funding a new industry body that looks after the rights of directors, shareholders and creditors and to whom directors, shareholders and creditors can go to for honest, accurate advice or help. It would be like a dedicated ombudsman, de facto watchdog and de facto victims association all put in one.

Mr Fong—Yes.

Senator HURLEY—I think that is a very interesting point, both as you are going into any kind of administration and afterwards if there have been any problems, that there needs to be some place where you can go for unbiased advice that ideally you do not pay for, but if you have to pay for it, at least it is some nominal fee.

Mr Fong—Correct. I think that is a very important thing for the confidence but, of course, you can couple it with changes to the law which allows creditors to terminate the engagement of the insolvency practitioner much more easily.

Senator HURLEY—Yes. Clearly, the termination aspect of it has been a significant problem. In relation to fees, one of our later submitters, the Armidale Dumaresq Council, includes some information on page 113 of their submission about a schedule of hourly rates for Stuart Ariff Insolvency Administrators. The chairman is quoted at \$500 an hour; principal, \$50; associate, \$390; down to an intermediate at \$110 an hour for a trainee. They are substantial fees, but not over the top if you are employing top lawyers, business advisers and so on. Again, the disbursement rate says accommodation cost at cost, meal costs at cost, phone and, for example, photocopying mark-up bill-back system at 65c a page. We had someone yesterday who said he had charged something like \$200 a page. They are the listed costs, but clearly Ariff charged far more than that. There was no check that the costs cited were in fact the costs he was charging. To me, it seems to be a difficulty that there does not seem to be much of a way, if the client detects this happening, that there can be any kind of halt called to the administrator's administration while you can work out whether they are or they are not operating ethically.

Mr Fong—Correct.

Senator HURLEY—I am not sure how you would do that without perhaps causing months of problems and an administration that may not benefit either the company or the creditors.

Mr Fong—I am not a believer in the hourly based system. The \$500 an hour is worth it if the practitioner is good.

Senator HURLEY—Yes, precisely.

Mr Fong—They cannot be trusted because by the time they send you a bill the horse has bolted. I am a believer in a fixed price regime upfront. Firstly, it will incentivise the practitioner to do the work as quickly as possible. Secondly, it allows the creditors and the owners of the business to assess the cost benefit of choosing administration or liquidation upfront.

Senator HURLEY—We heard earlier from liquidators, and I think they make a good point, that it is actually almost impossible to know how much it is going to cost before you get into a company. Some companies are quite simple; other companies you might find that they have other subsidiaries hanging off them all over the place—for example, even overseas—and what appears to be quite straightforward on the surface actually turns out to be an incredibly complicated mess that you have got to spend some time getting into. I do have sympathy with that point of view, so I can see why they prefer to charge an hourly rate, but I do take your point that there should be some way for the client to assess the likely costs. I just think it is difficult to hold an administrator or a liquidator to that point of view. Thank you for your contribution.

CHAIR—Senator Pratt.

Senator PRATT—You say in your submission that the appointed mediator chose to ignore your complaints, tried to convince you that Mr Ariff had done no wrong, that it was better to pay up and settle, and that the insolvency practitioner appointed by Mr Ariff as an independent expert to review his fees and disbursements chose to give a laughable and one-sided so-called independent report.

Mr Fong—Yes.

Senator PRATT—I would like to ask you about your view of the links across the insolvency industry, in terms of the bad apples and how they have flowed through to other parts of the industry?

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

Senator PRATT—In your view how would the industry become more self aware? Clearly, there are practitioners charging large fees, but certainly not behaving in the kind of corrupt activities that might exist elsewhere. Are you arguing that the industry, as a whole, is complicit in its lack of accountability? How would you frame that?

Mr Fong—I think the industry knows what is going on, but all of them are just making so much money. They have so much power and all of them want to keep the rice bowl full.

Senator PRATT—You also say in your submission that you would advise anyone to think long and hard before appointing an insolvency administrator and that an insolvency administrator could end up costing you more money than dealing directly with your creditors. Would you like to expand on that statement for us?

Mr Fong—When we went into administration the original deficit as assessed by the administrator was \$4.5 million. The administration cost us \$10 million and yet the creditors did not get a single cent. I could have given the creditors two times what they were owed and still have change in my pocket.

Senator PRATT—And a far more viable business. Do you think that is because you were a victim to someone who was corrupt?

Mr Fong—I think I have heard too many stories. I think it is not a one-off. It is a systemic problem. Everyone that I have spoken to tells me liquidators' and lawyers' fees and costs more often than not equal or exceed what is recovered—no return to creditors whatsoever.

Senator PRATT—There has been some discussion about the idea that creditors should be able to vote an administrator or liquidator out of their position, but it certainly appeared to me over the past few days that the level of corruption in this industry could be, purportedly, that you could have one or two creditors that could be complicit with trying to get a bad administrator in the role, as opposed to one where you might have a more reliable relationship. Do you have any views about how we can make creditors more informed of their rights and capacity to intervene in these situations?

Mr Fong—Again, we go to the fact that there is no system. If there were a proper, uniform system, perhaps where there is a standard way of reporting and conducting oneself, just a proper system—

Senator PRATT—Instead of standards, our system seems to have been set up around the so-called professional integrity of the professionals who exercise these obligations.

Mr Fong—Correct.

Senator PRATT—We do not seem to have a system that demands any level of professional integrity from them, do we?

Mr Fong—Correct. I agree with you.

Senator PRATT—Lastly, your submission argues that the government should pass laws to enforce insolvency practitioners and their industry bodies to properly educate the public about the administration process and their rights and obligations, including the inclusion of clear and adequate warnings. In your view, what do you think that should look like?

Mr Fong—For example, a simple sheet where, No. 1, you say creditors have a right to terminate the appointment of an administrator by a majority vote. That would be good. It is just what you can do to protect your rights.

Senator PRATT—Thank you.

CHAIR—You certainly have made a very good submission with some very strong points. One of the problems that we see is that ASIC really does not seem to have the resources to deal with smaller-end cases. They seem, in fact, to be interested only in bigger cases over \$10

million. Do you think that we should have a separate body to deal with smaller cases or is it plain that ASIC is simply underresourced and needs much greater resources and manpower to deal effectively with the kind of problems that this committee is hearing about? Would you like to see ASIC expanded or would you like to see a different body to deal with smaller cases?

Mr Fong—Either/or would improve the system; more resources definitely, or perhaps another division within ASIC to deal with small to medium business problems. The most important thing is that ASIC needs to communicate. It is not good enough where anyone makes a complaint and we do not hear from ASIC for six months and they do not tell you anything. There is no-one to ask for help.

CHAIR—One of the problems that we have heard about is that ASIC invites people to lodge a complaint online and that you get an automated response, and then some months later or a year later you hear from ASIC. That rather suggests underresourcing, that they do not have the resources and maybe it is the view that they are doing the job quite well but they are underresourced, so the answer is to substantially increase their resources.

Mr Fong—Yes. The other way is to take matters into our own hands and be able to terminate the administrator much more easily.

CHAIR—That is the point that Senator Williams has made several times. One of the problems is that that power could be abused by the members of a company who, for the wrong reasons, did not like the way the administrator was carrying out his or her job. They might feel that they were exposing fraud or criminal activity or something like that. Should you be able to not do it directly, but petition through a body like ASIC for a change in administrator?

Mr Fong—No. ASIC will take too long and by the time they act too much harm would have already been done. In any case, when the company goes into administration it is the creditors that are owed money. How they want to deal with that situation is up to them.

CHAIR—Yes, we understand that. They seem to be the big losers in this.

Mr Fong—Exactly. If they want to terminate the existing liquidator and it has a negative impact on them, well that is their right.

CHAIR—Thank you.

Senator WILLIAMS—Thank you for that. Just on that issue, one of the problems I see is a serious problem in that by the time you have reported someone as doing wrong to ASIC that time delay until they have firstly addressed the issue, then go through the court procedure and the court system, years have gone by and in the meantime there has been a lot of other wrongdoing that has been carried out by that very person. That is why I brought about the idea of them being licensed and they could just have their license suspended instantly until the court process runs on. If someone like ASIC had that power I would not be expecting them to exercise that power every day of the week, but to use that power in extreme circumstances when they think it is absolutely necessary, when someone puts the evidence in front of them that says here is the clear case of wrongdoing; they have done this and this; here are the banks statements, invoices and receipts. Perhaps ASIC could then act.

I wanted to take you to another issue. When you called in Ariff you owed about \$4.5 million; is that correct?

Mr Fong—Correct.

Senator WILLIAMS—When he left you owed about \$10 million. By the time you got rid of Ariff how large was the debt of Carlovers? Was it \$10 million?

Mr Fong—We were down \$10 million, yes.

Senator WILLIAMS—Carlovers is still going today.

Mr Fong—Correct.

Senator WILLIAMS—I saw them when I drove in last night. If you are a company that can take such a big hit and still be going today, how come you called in the administrator in the first place?

Mr Fong—We called in the administrator not because we were insolvent. We called in the administrator because if we did not have this voluntary administration regime it was only a matter of time before we became insolvent. We had 50 sites, half of which were profitable and the other half unprofitable. But the unprofitable was more than profitable so the company was making losses. The company could not get out of this death spiral because the unprofitable leases were long-term property leases of 10 to 20 years. If there was no voluntary administration regime that allowed us to restructure the business then it was only a matter of time before we went into insolvency. It was viewed that it was the responsible thing to do. After all, we had 60 to 100 casual employees. We had many people and suppliers relying on our continued existence.

Senator WILLIAMS—You obviously leased the land and the premises where you built your car washes.

Mr Fong—Correct.

Senator WILLIAMS—Were you trying to get out of any of those leases at the time that were non-profitable car washes and you wanted to close them up? Were you trying to get out of any of those long-term leases?

Mr Fong—Yes, we were.

Senator WILLIAMS—Were you having a problem getting out of those leases?

Mr Fong—No problems, because the landlords were having difficulties getting payment from us.

Senator WILLIAMS—They would have been glad to see you go.

Mr Fong—Some of them, yes.

Senator WILLIAMS—Thank you.

CHAIR—Unless there is anything else you would like to add, we will conclude this segment.

Mr Fong—I just want to thank the Senate committee. I think what you are doing is a very good start. It shows that you care and for that I think a lot of people are grateful.

CHAIR—Thank you. The Senate committee will certainly make a report which will recommend some changes and you will be able to read that report.

Mr Fong—Thank you for your time.

CHAIR—We will adjourn for lunch.

Proceedings suspended from 11.54 am to 1.01 pm

HOLMES, Professor Scott, Private capacity

CHAIR—I welcome Professor Holmes. Although you have made a submission, we invite you to make an opening statement. Would you like to proceed to do that?

Prof. Holmes—I will be fairly brief because the submission is there and I do not intend to go over it again. I would like to thank the Senate Economics Reference Committee for inviting me here today. Like many of those who have spoken so far, I was moved to make a submission to this inquiry as a direct result of the practices of one Stuart Karim Ariff. Although I have had no personal involvement in a business that has been penalised or destroyed by the actions of what I call a rogue administrator, Ariff demonstrated the enticing encouragement provided by the deficiencies of the law and the insufficient response of those who apply it, both regulators and the professional bodies.

Regulations and actions of the regulators will never, however, eliminate behaviour that is deliberately designed to defeat their purpose. In fact, regulations will often establish the parameters in which misbehaviour can be achieved, and that certainly was the case for Mr Ariff. Most of this behaviour is at the margins and does not normally reflect the mainstream compliance of most with both the spirit and letter of the law. However, as it is plain to see from the numerous submissions made to this inquiry, there exists a need to address the current regulatory environment and the function of key regulators to render improvements in order to better insulate companies from the actions of rogue administrators.

Our submission highlighted a range of things. It involved seven fairly clear recommendations. I just want to touch on a couple of specific things. One is the professional bodies. Professional bodies like the Institute of Chartered Accountants are established to set standards for behaviour of a profession and signal that the members will meet these standards. Where they do not meet these standards they will enforce that they do or they will do something about it. A number of repeated complaints were made to the chartered accountants. They basically refused to act, arguing that when matters are before a court, as in the case of Wambo Coal and Ariff, they must wait until the case concludes. During the period of this case other complaints were made about Ariff, but the CAs refused to investigate them because there was a matter before the court. I was given this explanation directly by a senior staff member of CAs. When I followed up to ask what was happening after the findings in Wambo Coal I was told that Ariff was fined a substantial amount. This turned out to be \$20,000, less than half of what Ariff withheld unlawfully from Wambo Coal. When I followed up in 2008 to inquire as to the investigations the CAs were undertaking into complaints made about Ariff, and what status they were at, I was told that now that ASIC was investigating they would not be taken any other action until the outcome of the ASIC investigation was known. They basically did nothing. This raises the question: what is the role of such a professional body? Why do we give it the status we give it if they actually provide a safe place for these people?

It is interesting, as an aside, that Mr Ariff has never been investigated by the Chartered Accountants. In fact, he resigned from the institute. He has never even been excluded from the institute and there is no reason why he could not rejoin, so I think that needs to be considered.

I understand you have heard a fair bit about ASIC so I will not go into too much detail other than to say that I was fairly shocked by the behaviour of ASIC. It has a duty to enforce the Corporations Act, and the procedures for dealing with complaints at ASIC is a very hit and miss affair. They spend 50 per cent of their total expenditure on enforcement, but they do not deal with individual complaints. If you go to their website you will see that they say, quite clearly, that they do not deal with individual complaints, and they adopt, what I call, the general market rule, which is that they will only undertake investigations—and they say on their website—where greater impact in the market and benefit to the general public more broadly can be achieved. I suggest to you that was probably fairly enticing information for the likes of Mr Ariff.

Considering that there are approximately two million businesses in the Australian economy and 85 per cent of them employ fewer than four people, it is a sure bet that a lot of voluntary administrations are going to be small firms that do not have access to internal accountants and expertise and who face an uphill battle with people who can behave within the law as it now stands. But for the actions of dedicated business people and some journalists who eventually shamed ASIC into action, I am still wondering what ASIC would have done. Even when ASIC pursued Mr Ariff, it let him off the hook. I cannot understand for what reason.

There is also an important issue that I think the committee should consider in the Australian economy, and that is that anyone can be a director of a company and assume the obligations and role of a company director in this country. I could make a phone call now and become a company director in the next hour. I think that needs to be considered. If I want to drive a car, if I want to jump out of a plane, I have to have a licence. If I want to run a company and employ people, put their futures at risk and engage with creditors, I can do that. Why do we not require these people to show some basic knowledge? One of the strong recommendations of our submission is that directors should be licensed and there should be some minimum level of education of their obligations and duties. This would also give ASIC a base to be in regular contact through electronic means with these people to update them on what their obligations might be.

Also, there needs to be consideration given to alternative trading out options. I noticed that Minister Bowen has released a paper called *Safe harbour: trading out*. I suggest that the committee consider this paper, because it has some excellent recommendations on an alternative approach to voluntary administration, which is ultimately workable.

Finally, there are changes needed, obviously in the Corporations Act. One of those which is glaring is the fact that an administrator can sell and dissolve assets at any value they see fit. I think there need to be some sort of changes that require a baseline valuation of assets and increased accountability against it. Obviously there is more detail in my submission, so I will conclude.

CHAIR—Thank you. You have made a series of seven recommendations.

Prof. Holmes—That is correct.

CHAIR—I thought that the most constructive way to deal with your evidence might be to go through your recommendations one by one and senators could quiz you about each one of them. The first recommendation in your summary at the end is the work-out option. You state:

The elements of the extended business judgement rule and the moratorium option proposed in the Commonwealth Governments discussion paper: Insolvent trading: A safe harbour for reorganization attempts outside of external administration (January 2010) be implemented through changes to the *Corporations Act*.

That sounds a bit like the US chapter 11 scenario.

Prof. Holmes—Yes.

CHAIR—Do you want to briefly address that and take some questions.

Prof. Holmes—It is very much like the chapter 11 option. In this country once you become aware that your business is technically insolvent you must cease trading. That requires the appointment of some type of administration. A lot of these businesses do not have access to appropriate external advice and they cannot afford it. Even if they were able to get it and they take that advice then the accountants, bank managers and others who support these people would be deemed as de facto directors and they would be liable and at risk. Something needs to be done to give people the option to work things through. What we have proposed is to take, basically, the safe harbour option and suggest how it might be operationalised. Basically, they can take advice from appropriate professionals. Those people are registered as providing that advice under the moratorium, that there is a detailed work-out business plan which clearly identifies milestones and report-back dates, and this is signed off by 75 per cent of the creditors. Anyone who comes to do business with the business after they have entered into this moratorium needs to be informed that the moratorium period is in place, that there is a trade-out plan and they need to be clear that that is the case.

CHAIR—Senator Williams.

Senator WILLIAMS—Thank you for your very professional submission. I would like to take you to those professional standards set by industry bodies.

CHAIR—No, we are doing it one by one. The work-out option.

Senator WILLIAMS—I am sorry, chair. Could you briefly explain chapter 11, for the public here and ourselves, as it works in the United States? Just in brief and simple terms.

Prof. Holmes—I do not pretend to have a strong working knowledge of the US chapter 11, but it is basically along the lines that I just outlined. There is a registration that the business is in trouble, is insolvent.

Senator WILLIAMS—So they register it?

Prof. Holmes—Yes, with the appropriate regulatory body. They then work on a deed of arrangement with appropriate professionals to work it through. It is in almost exactly the same way as I am suggesting the Australian Corporations Act should be structured. I was asked the question earlier: has this ever been considered? I cannot say that I think it ever has.

Senator WILLIAMS—What you are saying is that we need to look at a situation where you can work through the problems that a company has instead of just bringing the guillotine down, which is often the case here in Australia?

Prof. Holmes—That is a very good description of what is happening at the moment. Basically the law is very clear. Those that advise companies are very clear about their liability so they will say, ‘No, you’re insolvent. You need to appoint an administrator.’ That is the point when you basically hand your business, your employees and your assets to someone else. If you are a large public company that might not be such a problem because your investors have diversified, but most small business owners have one asset and that is their business.

Senator WILLIAMS—Do you think that should also be the case in relation to receiverships? We have a situation in Australia where a bank can send in a receiver to a small business and the next day they have locked the doors literally, and just sell everything up. Do you think that should not only be applied to administrator/liquidators but also receiverships?

Prof. Holmes—I think it should be an option and there should be an explanation why the holder of the mortgage has not explored that as an option. We obviously cannot close the door completely on that as an option if there is significant debt involved and they are exposed, but I think they should explain why they have not considered trading out to recover their asset, their debt or whatever it might be, as well as let the business continue.

Senator WILLIAMS—If we have this proposal in place that you are putting here, then companies like Singleton Earthmoving would never have got into the disastrous, terrible mess that they were put in by this Ariff.

Prof. Holmes—From my understanding of Singleton Earthmoving, we would never had heard of it as a case and it would be a very successful business still operating in the Hunter.

Senator WILLIAMS—Thank you.

CHAIR—Senator Pratt.

Senator PRATT—The key point that I am taking from your submission in this area is that currently under voluntary administration, whilst it is the intent, there is no obligation to fully implement a plan and see if it is viable to turn a business around so that it can trade out of its debt?

Prof. Holmes—Exactly. The liquidator or the administrator has only one incentive. Let us be honest about that. That is to get their fee, which is normal. You are not going to explore too hard if you think that you might not get the fee that you are expecting, so you will start to liquidate assets. That is an obvious practice that we have seen for many cases. If this was an option on the table, they may rethink what they are doing. It refers to fees as well, which we can come to.

Senator PRATT—Thank you.

CHAIR—There are no other comments on recommendation 1, but it seems to be a good idea. Recommendation 2A is to establish a base value. I will not read it through because it takes time to do so. Is there a comment on that by the senators?

Senator WILLIAMS—We hear how assets are fire-saled. Under section 420A of the Corporations Act, for example, a bank cannot sell up a house or a property or some real security unless it is at or around market value. Obviously that is not the situation when it comes to VAs. That would be quite simple to introduce. If something was valued it would have to be sold on or near the value instead of perhaps ‘fire-saleing’ it to friends, for example, as we have heard.

Prof. Holmes—My colleagues will tell me that the market value is the value that something attracts in the marketplace. It can be hard to put a clear value on something when it is not actually on the market at that stage. There is a profession, valuers and others, who can provide an estimate and we should put some figures around those estimates to provide the way forward. What I am talking about is the recommendation that no disposal of assets for less than 80 per cent of their agreed market value by a valuer. We can never perfectly value something, but it would give us a way forward. You are right.

The second thing we need to do is to ensure that the valuers are at arm’s length, so there is proper arm’s length valuation, and that they have the appropriate credentials. Often, in these cases that we have seen, valuers and other professionals are appointed who have no expertise in that area but are not held to account.

Senator WILLIAMS—Let me run another idea past you. Imagine if there is roughly \$1 million worth of assets in a company and there were regulations to say that the liquidator cannot charge more than 20 per cent of the value of the assets for their fees. One of the huge issues we have faced with this committee is the remunerations, the fees and costs. If they were put at a maximum percentage basis it would be in the interests of the liquidator to sell it at the maximum value, because they can get the maximum commission. That would be an incentive to make sure that the assets are realised at a fair dinkum price.

Prof. Holmes—As long as we do not give them the incentive to actually sell the assets instead of trying to trade out.

Senator WILLIAMS—Yes.

Prof. Holmes—If we simply link their fee back that way.

Senator WILLIAMS—I am referring to liquidation, not just administration. It is when the company has moved on further to liquidation stage. We hear in so many cases where all the money that is received in the sale of assets goes in liquidator’s fees, court costs and so on, so the creditors get nothing. Perhaps there could be some way of limiting it so that there would be 80 per cent left over in the value of assets for the creditors. That would be a very stringent strict idea as far as costs awarded to the liquidators, perhaps a little bit over the top, but something similar to that idea where they could be on a percentage basis. Just like a stock or station agent, the more they sell your cattle for the more money they get. You could have a situation with a liquidator where the more they sell assets for the more money they get, but have a maximum percentage cut of the value of that asset.

Prof. Holmes—That makes sense if you were in the liquidation phase.

Senator WILLIAMS—Yes.

CHAIR—Senator Hurley.

Senator HURLEY—This one illustrates a bit of the problem I have. Most of the cases we have heard are of small to medium enterprises and mostly on the smaller side. If you are talking about establishing a baseline value for a larger company it might take you a very long time before you would even get to your step one, if it had significant subsidiaries, trusts or a very complicated structure. Do you think that it might be that we need to look at different ways of operating for small enterprises than larger enterprises?

Prof. Holmes—That is a good point. I think that we should, because we could make it a lot more streamlined and simple for smaller businesses. Larger businesses will tend to have public records of assets and values as well, which might not make it as difficult a job. I know when you are in a liquidation mode it is a different value to when you are in a trading mode.

One of our points we touch on in the submission is ASIC setting up a clear body or group that looks at small and medium sized enterprise, fewer than 20 employees, or if you want to put an asset value on it that is fine. With the way ASIC is broken up at the moment, small firms do not get mentioned anywhere. It is all about accountants, auditors and insolvency practitioners, but not about the actual people on the end of it.

Senator HURLEY—Yes. I think that is the issue in a lot of these cases, that smaller businesses have not got access to a quick reliable way to either go into administration or liquidation. If businesses are in distress, anyway, the longer you leave it the more chances there are to be problems. Also, is establishing a baseline for a company in administration within your first recommendation? I suppose I am a bit concerned that a company that has a chance of trading out might stop while the baseline valuation is audited, which may still take some time even with a smaller company. It may cause difficulties.

Prof. Holmes—What you touch on is a real issue, which is how do you ensure that the cash flow continues while you try to get to the moratorium point and the business plan. I do not pretend to have a simple answer to that one. What we have to do is introduce something which says that you cannot take on new debt during that period, but you can continue to trade. That may cause liquidity problems. The point you touch on is that as soon as these businesses stop, that could be the death sentence, anyway.

Senator HURLEY—That is right. Thank you.

CHAIR—I think the difference between small and large business is one that crops up quite a bit and needs a different approach. The next one is registration of proxies. Do you wish to make any comment on that?

Prof. Holmes—This is just a very simple one and I would not spend too much time on it. Basically, it is pretty specific to Ariff. I have not seen it in other practices, but I am sure it happens, where they solicit proxies. The voluntary administrator knows what proxies they have.

They know what power they have in a meeting. I think it should be eliminated very simply through the Corporations Act; that proxies are only valid for one meeting and that the voluntary administrator is not informed in advance; that a third party is notified as to who the proxies are.

CHAIR—I think some of us understand about proxies and the use of those. Senator Pratt.

Senator PRATT—There has been some discussion at our hearings about the notion that the meeting of creditors should be able to discharge an administrator or liquidator from their duties. Given the corrupt use of these kinds of processes could that, in fact, work both ways and how would we mitigate against the corrupt use of creditor control of such appointments?

Prof. Holmes—It can work both ways, and that is an issue. In this particular case this would be a simple way of addressing or attempting to put in place a barrier to this behaviour, but if they want to do it then they will do it. I do not think that we can write any law that will stop them from going and making a phone call or soliciting them to do it. What it does is it sends them a signal. What you are saying is that it could work in reverse, where they get the proxies and that keeps them in place when they should not be. That is a risk now.

Senator PRATT—I am wondering what would happen if you have a range of creditors who all want to have their interest returned to them, but you have one or two creditors that get to your liquidator or your administrator first and, if you like, have a cosy relationship where they are fairly assured that whatever happens they will get a return, but then really they are pushing and running an agenda to get a particular appointment. Does that kind of thing happen and is that part of what is happening here?

Prof. Holmes—Yes, of course it does. The problem with getting a solution to it is that they are normally the ones with the most at risk at the time. They are normally the ones with the most debt on the table so under the current law they have more say in how that is voted.

CHAIR—There is then the approved appointments recommendation. Do you have any comment there?

Prof. Holmes—No. I think we touched on it before, that they need to be appropriate professionals and they need to be able to prove their bona fides.

Senator HURLEY—When you are talking about the 75 per cent majority approach, how did you define that?

Prof. Holmes—It is three-quarters of creditors according to the current rules, which are based on the level of exposure you have to the business.

CHAIR—Do you mean all of the creditors or those present at the meeting?

Prof. Holmes—No, I mean all of the creditors.

Senator HURLEY—Again, sometimes these things are difficult to get together.

CHAIR—He says by way of an email.

Prof. Holmes—A flying minute.

Senator HURLEY—Sometimes it is difficult to identify, to get addresses and contact information.

CHAIR—Is that too high a bar?

Senator HURLEY—That is nitpicking, but I understand your point.

CHAIR—Are you suggesting that the percentage should be lower, Senator?

Senator HURLEY—I think the overall point is one well made, and I think those sorts of details could be looked at by someone more qualified than us.

CHAIR—The next recommendation is director registration.

Prof. Holmes—I have talked about that in my submission. I feel that some of the things that have happened would not have happened if directors had a better understanding of what their rights and obligations were. This applies across-the-board and not just with respect to this particular matter of insolvency and administration but in terms of how our economy works. Our economy is underpinned by small businesses and family businesses, and I think they need a better understanding of what their obligations are.

CHAIR—How would we achieve that? Would that be a program conducted under ASIC's jurisdiction or something like that, to provide a handbook?

Prof. Holmes—I do not want to get too specific, but I think that when you register as a director you should do a little online quiz-type thing that we do when we get our driver's licence and other things. I am more concerned that ASIC then has electronic contact with them so they can keep them updated and informed, so they are getting updates on things that change and they are also clear on what ASIC's role is. Hopefully, if ASIC focuses one day on the rump of the economy, they can actually contact ASIC for help.

Senator HURLEY—I would like to make a point about that. Do you think that might deter some people from forming a company and becoming a director, particularly someone who is running a small company who may not be that proficient in taking tests and particularly people who do not speak English very well?

Prof. Holmes—I am not suggesting that we give them a grade. I am proposing that there is evidence that they have been through it and looked at it. The structure of it should be more about informing rather than saying, 'You don't know this.' It is more about getting them to think about it. There is a way around language barriers, which can be addressed as well. It is more about making sure that they are informed and kept informed. I do not think that it would be a barrier to their owning a company because of all the things that the company affords them in terms of liability and other things.

CHAIR—I must say that I think this is quite a good idea. With the marvels of Google now documents can be translated into other languages. It would at least mean that company directors have an improved level of information.

Prof. Holmes—Yes.

CHAIR—Recommendation 5 is ASIC establish a division which focuses on small and medium sized firms. That is an issue that has come up several times during this inquiry, that ASIC's focus tends to be at the higher end and that lower end smaller businesses do not really get much attention from ASIC. I think this is a very important recommendation, that there be a division, as you suggest, of ASIC or some other body, which looks after the small businesses.

Prof. Holmes—What really surprises me in all of this is that the chairman of ASIC recently, on 27 January, came out and said that 'We have taken the view that it is our job, as a regulator, to push the regulatory regime to the limit.' Where were they when Ariff was on his rampage? They certainly were not pushing the regulatory regime to the limit. And instead of educating directors, ASIC is going to penalise breaches of duty with vigour. One would have thought that some of these breaches of duty are often not deliberate, particularly if you are not informed. That was what really pushed me over the edge with ASIC.

CHAIR—I do not think that we would disagree with that. There has been quite a lot of evidence given that ASIC does not pay much attention to small businesses and a lot of the problems that have occurred could have been avoided if ASIC had done so. The classic story we are hearing is that people make an online complaint and get an automated response and then hear from ASIC 15 months later. I think that is something that we would think was a good idea.

Senator HURLEY—Actually, no. I have a bit of a problem with ASIC, which is a centralised bureaucracy, solely performing this kind of role. I think there might be improvements to ASIC's procedures perhaps, but really it is up to other entities, including professional associations, to provide the kind of information and advice that the smaller businesses need. It is not necessarily about the complaints but about how to proceed and to explore whether their complaint might be justified. To tie up ASIC's resources in dealing comprehensively with every single complaint might be overkill. They would have to spend a great deal of money employing skilled ASIC staff to investigate a small and perhaps unjustified complaint about the behaviour of an administrator or a liquidator who might go into a very small company with very few assets.

Prof. Holmes—I must say that I disagree. ASIC has wasted \$40 million recently pursuing two individuals in the courts where the judge described them as fabricating evidence. That is \$40 million that could have been well spent on helping the small business sector.

Senator HURLEY—If you accept that, why do you think it is better to give them more responsibility? If you believe that they are not operating well in those two cases, why give them the task of doing more of it?

Prof. Holmes—Whether we do anything or not we are spending around about \$300 million on their operations to start with.

Senator HURLEY—They are not solely looking at this. They have a wide range of other responsibilities.

Prof. Holmes—I am not suggesting they are. What I would say to you is that in 2008-09 ASIC sent \$257 million back to consolidated revenue. They are a taxing body of the corporate sector. It would seem to me that they are a centralised place to which we should be pointing. The problem that we have for small businesses at the moment is that there is no clear identity. There is no clear lobby group to government. There is no clear point of call for people when they get into trouble. This is why I think we have to put someone's hand up and say they will.

Senator HURLEY—I agree with you. I think there is some need to provide more assistance to small businesses, but I do not think that ASIC is the ideal body to do that.

CHAIR—They are already doing it. That is part of their brief. What we are hearing in this inquiry is that they are not doing it. They are not fulfilling their public obligations.

Senator HURLEY—So you give them more responsibility?

CHAIR—No. They obviously need more resources to do what they are supposed to be doing. One of the things that has consistently come through, even this morning, is that small business are not getting the attention they need or deserve from ASIC because ASIC is only interested in companies turning over greater than \$10 million.

Senator HURLEY—I do not believe the solution is to provide more people to ASIC. I believe that the solution is earlier than that, to provide that there is a system that ensures that the registration procedures for insolvency practitioners are better so that you do not get it in the first place and, secondly, that if you do get it, there is a place where small business people can go to for advice to first of all check whether there is a serious problem or not and, then if there is, if their advice is that there may be, then they go to ASIC, rather than overloading ASIC with the investigation of a number of small and possibly unjustified complaints.

CHAIR—If you follow that through to the logical conclusion, that means we should exclude any small business from ASIC's attention.

Senator HURLEY—I did not say that.

CHAIR—That is the logical conclusion, in my view.

Senator HURLEY—I said that if it is established that there is a serious issue or there is a reasonable suspicion, then you go to the ASIC.

CHAIR—What about the stories that we have heard this morning? Never mind. Senator Pratt and then Senator Williams.

Senator PRATT—I would like to pick up on the complaints issue as well. You have talked about the market test here. I suppose it would be arguable to look at the question as to whether ASIC have, in fact, failed that market test in relating these issues in terms of the role of liquidators and administrators in small business when there are some reasonably systemic

failures. The market test does not appear to pick up a capacity to pursue those very bad apples in the system, which then seem to have a systemic influence across it.

Prof. Holmes—I agree. I have been researching small firms for the last 25 years. There is such a confusing plethora of things that they can go to. The state government has a layer of advisory committees and things. The local council has got something. At the end of the day there needs to be a proper investment made in this, and very clearly where it needs to go. There is no reason why ASIC cannot have a small claims division. Often it may even be a communication problem. I think there needs to be some serious focus on this by the federal government.

Senator PRATT—Thank you.

Senator WILLIAMS—I am sorry I had to duck out for a few minutes, so I hope I did not miss to much. Obviously one of the clear problems that we have heard through this inquiry is that people contact ASIC and they are not getting any reaction. We can look at some examples. What if we had an ombudsman and perhaps took the IP industry and put it under the one umbrella? At the moment we have cooperatives under the Department of Fair Trading in the state and we have ITSA looking after the individual insolvencies and bankruptcies. We have ASIC looking after corporations involved in it. It is clear that we need somewhere to get the reports in. People went to ASIC about Stuart Ariff in 2004 and Mr D'Aloisio made it quite clear that it is very difficult to deregister someone in the IP industry, with the time going through the court and yet the wrong doings went on and on, and more people were done over because of a bad liquidator. Surely if we had an ombudsman that could hear the little complaints, if a creditor is done over for \$1,000 or something, and then when a serious issue is there they can send it up a level to the people who are perhaps more professional, not at the coalface, in just talking to the public and hearing their complaints; the serious ones can go to the higher place and hopefully get attention. What do we need to do to at least have somewhere where the people can be listened to, for a start, and then when action needs to be taken it is taken?

Prof. Holmes—This goes back to Senator Hurley's point. Remember that every company in this country has to lodge an annual return with ASIC, so there is always an annual point of reference with ASIC. If a small company does not lodge its return on time ASIC chases them and penalises them. It can do that well, but it cannot address the complaint side. I think something needs to be done about that and there is plenty of revenue there to do something about it. If it is not ASIC, then another body appropriate to deal with that. ASIC is happy to take millions of dollars off small firms, pursue them when they do not put in a return for assets that are worth less than \$10,000 in some cases, but their complaints come in as a single string and go into some database.

Senator WILLIAMS—You said in your opening statement that ASIC does not deal with individual complaints. The individual complaints put forward about Stuart Ariff soon mounted up to many complaints and I think it was only media reports that made ASIC finally act. The duration, from the first complaint to the guillotine coming down as far as Ariff and his professional livelihood, was years, yet millions of dollars have been syphoned out, drained out and disappeared to the detriment of many of these small businesses. This is surely one of the biggest problems this committee faces. How can we get the reports in from the public and get action straightaway, instead of just delays? I take you back to whether they should be licensed, with ASIC or whoever the body is looking after the IP industry, and they can immediately

suspend the licence of someone to stop them practising instead of going on for years and robbing more.

Prof. Holmes—The important point that seems to be lost on ASIC is that there are 1.7 million small businesses in this country. They are what makes the economy work. The big companies, obviously, have greater turnover, profits and employees, but if those small firms are not there then the economy does not work.

CHAIR—That is a good point. We will move on to recommendation 6, transparent responses to complaints, because we are now running into time constraints.

Prof. Holmes—This is an extension of the discussion we have just had. If you have made a complaint and ASIC does not know what to do with it, or does not want to do anything with it, then it just exists in the ether. You never know what has happened. There needs to be some sort of call-back mechanism.

CHAIR—Is there any comment from senators?

Senator WILLIAMS—That is a very valid point. So many people have contacted ASIC. I have said, ‘What have they done?’ They said, ‘We haven’t heard anything.’ If ASIC can just simply say, ‘We have looked at the issue. This is what we’ve decided and we’ll keep you informed’, that at least satisfies people’s minds that something is being done and surely that would be a big help to the general public and it would also grow confidence in ASIC, if that were the situation.

Prof. Holmes—Yes.

CHAIR—The last recommendation is the role of professional bodies.

Prof. Holmes—I must say I think professional bodies have failed here and are failing with their attitude. That goes to the very core of what the bodies exist for. I am a member of one of these bodies and I am disappointed in what happened. I think that it needs to be very clear as to what their role is. Justice Bergen, in her judgment, was very clear that she saw the accounting profession as part of the regulatory body that oversees standards. She made that very clear. There is an assumption by the court that this is the case, but it is certainly not an assumption that seems to be shared by the professional bodies.

CHAIR—There has been a suggestion that has come out of this inquiry that there should be a different system for registering insolvency practitioners, with periodic registration, not forever registration; that they have to renew their registration and that there is a power to suspend them from practice if there is malpractice, and also a requirement for ongoing education. What would you say to that kind of proposal?

Prof. Holmes—I think that it needs to be done through regulation. I do not think you can trust the professional bodies to do this. Regulation of ongoing continuing education is pretty slack. Secondly, I think there needs to be a very clear way forward for terminating someone’s capacity to act as an insolvency practitioner.

The problem the professions have is, if they go too soon and the case is not founded, they leave themselves liable for civil action. From my point of view, I think we should be taking that away, probably not just for insolvency practitioners but for other professionals. In the same way that the financial planners have to register, I do not see why we could not adopt the same system for accountants in general, full stop.

CHAIR—That is a good model. Surely if there were a charge of malpractice, say in the Ariff case, which crops up a lot, then he could have been suspended from practice pending the outcome of the case.

Prof. Holmes—He could have, and I would not disagree with that. The problem I have is, if I think it through, I can see why the professional body might have been reluctant, although I will never defend their behaviour. If they suspend someone and it is then found that the accusation is malicious or whatever it might be, based on the wrong information, then that person has lost their client base or income during that period. There would need to be something put in place that was able to accommodate that.

CHAIR—I think a suspension would not necessarily be automatic. It could be discretionary on the circumstances. The other issue is whether it should be some other body than a professional body that would carry out this role.

Prof. Holmes—I think it needs to be an independent statutory body, hopefully one a bit better than ASIC.

CHAIR—Are there any other comments?

Senator PRATT—How do you think the government should go about working with professional bodies to clean up their act? They will need some form of internal reform process, but it seems to me that the situation has gone so far that clearly there will need to be some direction from government as to the sorts of standards expected and required.

Prof. Holmes—Yes. I think the professions should be made accountable to whatever body you end up with, as to how they deal with complaints and that their complaint mechanism models are ticked off by that body. That is what we are assuming is happening. The courts are assuming it is happening. That needs to happen. You are going down the right path in that sort of question.

Senator PRATT—It appears to me, in the absence of clear regulation in this area in terms of the obligations of administrators and liquidators, that we have a system that relies on the professional integrity, as you also referred to, of the professionals that are within it. I think you are arguing that the professional bodies, themselves, are not maintaining that integrity broadly across their professions?

Prof. Holmes—It is not necessarily a part of their key focus and I think that it needs to be. These professional bodies exist as gatekeepers to ration so that their members can make more money. That is their status in society and if we are going to give them that status—let the members earn economic rents—then we should be making sure that they perform at the right standard.

Senator PRATT—Thank you.

Senator WILLIAMS—Just on that, you said in your opening statement how you think the professional standards should be set by the industry body. How would the industry body police it? They can set the standards. They can raise the bar saying, ‘You must perform above this level’ of ethical, moral or whatever standards you want to put in there, but it would be very difficult for that professional body, in this case the IPA, to actually police everyone. It would cost them a fortune in resources and so on. How could they monitor the behaviour of their members?

Prof. Holmes—Their members are meant to report their CPD hours, their professional development hours, and that should be against a certain standard. Among the professional bodies the IPA is an exception. It is a small professional body. If you look at the Institute of Chartered Accountants and the CPAs, they are massive undertakings with enormous resources, and members are very happy to pay the fees they pay because of the status they get. Ultimately, they should have a system in place to investigate misconduct and at the moment it seems that that system is a bit loose.

Senator HURLEY—Do you believe that the professional bodies would have and should have had some idea of the people in the profession who are not operating at a reasonable standard—people like Ariff?

Prof. Holmes—I think that they would have. They were certainly being told by a number of people. If you are being told repeatedly about the same individual—remember that at the time there were only 571 insolvency administrators in the country—and this one, two or three names keeps bobbing up, you would have thought that that would be sufficient to warrant more investigation than I believe took place. As I said, the Institute of Chartered Accountants never investigated Mr Ariff.

CHAIR—And he is a member.

Prof. Holmes—He was a member until they asked him to resign. They could not even kick him out.

CHAIR—Are there any other questions? No? Thank you, Professor, that was very helpful.

Senator WILLIAMS—It was a wonderful submission.

[1.48 pm]

WRIGHT, Mr Richard Bruce, Director, Jeogla Pty Ltd

CHAIR—Welcome, Mr Wright.

Mr Wright—Thank you very much. I am very grateful for the invitation to appear before the committee. Over the last 10 years my company and I, which really consists of my family, who are sitting in the back seat, have been through hell and high water, to put it mildly, and this has obviously been up a lot of dry gullies, if that is the right term. I am a professional cattle man and at the peak of my career managed and directed properties from the Central Highlands of Queensland to Northern New South Wales, running in excess of 30,000 head of cattle. My business was based on breeding cattle. I know a lot about genetics, fertility and the environment. These three elements are the key to a successful cattle breeding operation. I have had the privilege of representing the cattle industry and farmers at both state and federal levels for over 15 years.

My submission refers to the compilation of a series of documents, not allegations but documents, all of which are signed by the representatives of the organisation involved in the destruction and demolition of my family's hard work over some 170 years. In the 5 or 10 minutes I have as preliminary to any questions the committee may wish to ask I will take to point out key references highlighted within the documents I intend to pass on to you. These references are contained in complete context—the complete text provided—and as such cannot be construed as out of context. They prove the grave miscarriage of justice perpetrated on my family.

I would ask you to consider the first document, which is a judgment handed down in the New South Wales Supreme Court, at the back of which is the overall result. For the benefit of the committee I will provide this document for your reference. The error in this particular judgment quantifies as an amount of \$1,065,649. This error was made on one asset, and that is relative to the commercial value of the cattle on two properties, Jeogla and Hernani, only. This was effectively a windfall for the new corporate owners. These cattle were all sold on a meat value and there was no account of this famous breeding herd's history, its genetics or its fertility. The documents used by the bank/receivers' legal team were financial statements drawn up for tax purposes only, with depreciated values of the livestock and not commercial values. In this process they also failed to account for calves at foot and calves in utero, which of course were born after the receivers' appointment and before the properties were sold, at an estimated value of \$1.36 million. The amount of the judgment error in itself is sufficient to conclude the receivers should never have been appointed in the first place.

As to the land valuations done out by the bank, separate from the cattle valuations, they were also wrong also, with the result that the perception was that our debt to equity ratio was deficient to satisfy bank calculations. The holistic value of our business was never even attempted but severed into unmarketable components. I would ask the committee to consider the analogy of a car body without the engine. The business was cattle breeding, and that was the engine. The land carried the cattle and without them there was no business. Striping out the main enterprise and

divesting it from the geographical property network and the severance of the off-farm investments was unconscionable in itself, let alone the fraction of the real value received. The strategy of orchestrating accounts just to perhaps procure a bigger and better client or exit an industry it failed to understand is unprincipled, and to just throw in assets without pursuing fair market value is unscrupulous.

There are documents specifically related to the bank, but without them receivers, liquidators and administrators are not often appointed. Under chain of responsibility legislation the bank is responsible for this inappropriate appointment. The secondary predators, valuers and agents, are engaged at massive cost to the business in the form of commissions and professional fees, all directing it towards destruction. Remember this was a self-replenishing enterprise. It appears that strategic alliances or cartels are the modern form of corruption. ANZ Bank and BHP Billiton have directors in common, a scheme or arrangement to procure business opportunities. It appears yet another strategic affiliation exists between the ANZ and the Australian Securities and Investments Commission. The ANZ customer advocate was appointed having been previously employed by the Australian Securities and Investments Commission. It is common knowledge that financial institutions appoint what they perceive to be expert competent professionals to carry out their unlawful activities when it comes to business. The arm's length arrangement allows them to instruct their appointees to jointly and severally destroy sound business with impunity. The cast of thousands all have the capacity to blame the other one. Nowhere on the ANZ statements, and I will table them, or the receiver's reports of affairs to the Australian Securities and Investments Commission is there any reference to or adjustment of the \$1 million-plus error, and at the point of sale there is no adjustment for yet another calf crop on the ground. How on earth could anyone refinance when the purposeful tactic taken was to ensure our true financial position could never be established? The statements show massive expenditure after the judgment which appear to support the costs of the receivers' failed appeal. Why would a company such as ours fund an appeal against a judgment it had just won? We never invited litigation so all legal costs are as a result of this inappropriate appointment.

Finally, I would like to say that no Australians should be denied the right to pass on to the next generation their rightful inheritance. I would ask you to consider, if you will, what it is like to be unceremoniously and wrongfully ejected from your home. I brought with me these key documents to which the submission you have refers, for the committee to consider, namely, a copy of the judgment and its quantum at the back, which is the result of that failed appeal. I brought with me misleading and deceptive bank statements and correspondence to and from ANZ. I have brought with me a copy of the ANZ annual report pointing out the directors in common with ANZ and BHP. A deal was done there on a Central Highlands property with a massive coalmine under it—directors in common. I brought with me correspondence to and from the receiver. I brought with me correspondence to and from the Australian Securities and Investments Commission. I have also brought with me copies of the contract for the sale of our home property. That really concludes my words to my submission and I welcome any questions that you might like to put to me. Thank you.

CHAIR—Senator Williams.

Senator WILLIAMS—Thank you for your attendance today. You have my sympathies for what has happened to you. The ANZ Bank appointed a receiver to your property; is that correct?

Mr Wright—That is correct.

Senator WILLIAMS—Did you take legal action to have that receiver removed?

Mr Wright—We did not acknowledge the appointment of the receiver. The two directors of this company are in this room and we refused to sign any documentation in respect of that receiver. We knew, in our hearts, what was going on was wrong. The bottom line was that here was a mob of cattle that was sold as meat, most of which had calves at foot or calves inside them. They were sold at a meat value. Mother Nature tells you that is wrong. We did not have to acknowledge it. We refused point blank to acknowledge the receiver.

Senator WILLIAMS—My father is a keen sheep stud breeder and I saw the investments in the sires and classing of the ewes to get better stock. Basically, it is not only improving your own income but it is actually improving the nation's productivity. You had years of breeding stud cattle. Were they Angus cattle?

Mr Wright—No, they were Hereford cattle.

Senator WILLIAMS—When they were sold they were sent to the abattoirs as meat and being aged cattle or full grown cattle most of that would have gone into mince meat, I would imagine. You had years of breeding stock horses and they were sent to the knackery for dog food. Is that correct?

Mr Wright—They were sold at the dogger's value at the end of the day. It was pointed out that the receiver could not pass the parcel, as it were. At the end of the day the judge ruled that it was the receivers' responsibility to ensure fair market value. The receiver tried his hardest to say, 'Hang on, I appointed professional people.' The professional people he appointed were just unprofessional.

I was interested to hear this morning reference to a stock and station agent. I think you might have commented on that, Senator Williams. When you think about an agent's commission—and I will put it in fairly basic terms—if an agent can sell a house in a street in Newcastle for \$300,000 on two different transactions, then he gets more commission than if he sells it once for \$500,000, so it is a bit of a furphy to suggest that an agent is going to pursue maximum price. In this particular case, this was a fairly large operation in rural terms, a family run, and I believe that the agents involved were very second-rate. They were mentioned in the judgment. Quite frankly, they were just totally wrong and proven to be in the court. The buck-passing goes on, but at the end of the day I am sure that this particular instance involved the bank pursuing a bigger and better client.

Senator WILLIAMS—You had a property in Queensland. Did you say it was in Central Highlands?

Mr Wright—That is correct.

Senator WILLIAMS—What area is it in? Is it in the Mount Isa area?

Mr Wright—It was at Moranbah. It was a property called Broadmeadow. It was about 200 kilometres west of Mackay and it was in the centre of the Owen Valley Basin. There is a massive coalmine on the property.

Senator WILLIAMS—Now?

Mr Wright—We do not have it anymore.

Senator WILLIAMS—No, but the coalmine was not on the property when you owned it?

Mr Wright—It is huge. The property ended up being severed by mines. It had a rail loop that severed it. If we were mustering cattle we simply could not move them from one side of the property to the other one and get a stockyard. It became almost unmanageable, because of the coal infiltration on the property. It was pastoral lease country. That is a little different to the freehold home we had. In the instance of pastoral lease country, I am sure you would remember the Wik decision.

Senator WILLIAMS—Yes.

Mr Wright—I think that may have been the first step in our destruction. What I am saying is that the Wik decision was ignored by 99.9 per cent of Australians because, quite frankly, it did not affect them. In this particular instance the Wik decision was used by BHP in cahoots with the ANZ to suppress the price of this property. When we went into mediation we had a timeframe attached to a deed to sell down this property. This was the first one of a forced sale. The result was that the Wik decision was used to suppress the price, and the ANZ Bank even told us that there is only one buyer and that is BHP, because of the Wik decision. I was asked in a court of law in Sydney as to how on earth the Wik decision affected me and our family. Let me put it to you this way. Prior to the Wik decision, the whole mindset was about land title. When the Wik decision was handed down, in effect, if I put you in a home unit in Double Bay in Sydney that you owned and you went home to find complete strangers sitting in your living room, you would ask why. That is what effect the Wik decision had. Nobody knew what rights, if any, natives had. I can assure you I do not think the Aboriginals are any better off for it, but be that as it may the whole perception about trespass just went out the window and, of course, very quickly the ANZ got on to this and said, ‘As far as we’re concerned your property is really worth nothing until such time as the Wik decision is clarified.’ To this day I still do not think it is clarified.

Senator WILLIAMS—Let me take you back to receivers. That is what we are interested in. We heard evidence in Adelaide from professors and doctors from universities about how the UK have changed their receivers, how it is carried out and so on. We have heard about section 11 here today from Professor Holmes and how the United States works. In Australia, if a bank lends you money and they think you are not viable, they can just send the receivers in tomorrow. I do not think they need court permission or anything. They can just send them in. When they sent the receivers in was your business operation viable or not viable?

Mr Wright—I said in my opening remarks that the cattle business we ran was self-replenishing. I do not know what more you can do than that. The bottom line is if you had 10,000 head of cattle and 2,000 out of that 10,000 were heifers, which did not calve for two years, then the other eight, in our business, put on the ground 90 per cent conception. Ninety per

cent of the 8,000 head of cattle had calves at foot. The whole operation was self-replenishing in 18 months.

Senator WILLIAMS—The point I am coming to is not so much your livestock. I am fully aware of that. With the level of debt that you had with the ANZ you were quite capable of paying the interest, perhaps some principal, paying your wages and running the operation. What I am asking is: was the operation financially going to the wall or was it viable?

Mr Wright—The operation was very, very viable.

Senator WILLIAMS—You had plenty of equity left in your assets. If you had so many million dollars worth of land and so much debt, you had plenty of equity, the differential between your assets and your debt?

Mr Wright—Off the top of my head I would think there would have been \$60 million worth of assets and \$20 million worth of debt maximum. The machinery that worked against us was quite frankly the judgment, after being handed down, being replaced by an appeal. The receiver appealed against the judgment and he regarded it as a reflection on him. He appealed against the judgment. My bank statements tell me—and I will provide copies of them—that the bank funded his appeal to an extent of \$500,000, if the bank statements are at all accurate. And if they are not, where are the accurate ones? Do not forget the timeframe when this appeal was going on was 21 months between when the court case was handed down and the appeal, during which time interest and penalty interest was being applied by the bank and the receivers saying, ‘I’m independent of the bank’ and the bank saying, ‘I’m independent of the receiver.’ The documentation that I am going to give you shows a letter from the ANZ Bank after the judgment, saying that as far as they were concerned this person was a highly professional insolvency practitioner. Professional for their purposes maybe, but certainly not honest and certainly not for our purposes.

Senator WILLIAMS—Thank you.

Mr Wright—Could I be so bold as to provide more documentation?

CHAIR—Yes, you can do that. By all means, if you wish to table documents.

Mr Wright—I just think that it is important that the committee get this.

CHAIR—Mr Wright, the focus of the committee is finding remedies to the problems you have reported. What would you suggest we might give consideration to recommending in this committee’s report?

Mr Wright—In my submission I made some recommendations on page 9, which we can go through, if you would like to do that.

CHAIR—Yes, we can do that.

Mr Wright—The problem that agriculture faces is, quite frankly, a very low profile and a total misunderstanding of how it actually works by the general populace. We really have

agriculture now in the doldrums because if the population cannot get their cheap food and fibre through Woolworths and Coles then they will import it, anyway. Unfortunately, agripolitics is not strong. It is almost impotent, in my opinion. I was involved in it before. I know how angry I used to get. Unfortunately it has gone downhill.

CHAIR—You have a list of legislative or regulatory changes there and you have one regulation for the banks to ensure a correction of errors and adequate compensation for damages.

Mr Wright—That is step one. The bank expertise in agriculture, certainly in the cattle industry, is just totally devoid. It is worse than that. The agri-business managers, right now, are usually on a five-year contract and if the kitchen gets uncomfortable they will move them on and get another one. We could never ever get to know our finance managers in a way in which we were confident that they understand what on earth they were doing. It showed out in the judgment. If a breeding cow is only as good as a throat being cut then why breed cattle? That is where I am coming from.

CHAIR—You are talking about an estoppel applying until such time as the matter is settled to the satisfaction of the court so that no action is taken on a judgment. Is that what you are saying?

Mr Wright—I mentioned earlier the scenario where the appeal, I believe, was a strategy adopted by a bank with a solicitor in common with the receiver to go another 21 months to make sure we would not survive. I am suggesting an estoppel. If a judgement is handed down, if an estoppel is applied then and there, until such time as proper calculations are carried out by all and sundry, including ASIC, then hopefully people can see the error that has been made.

I had God's own trouble with the Australian Securities and Investments Commission in just trying to explain to them how on earth the breeding operation worked. There was just nobody there that knew. If you started to talk about the identification of a cow and how that could happen or a pregnancy diagnosis then these things were just out of their loop. They were not even interested.

I think No. 3 covers the point we have just made. It is to suggest that an estoppel is there, until these things are sorted out. Just to expand a little bit, between when the property was first mooted for sale and when it was sold another 2,000 calves hit the ground. They were never on any contract. In your little green bag you have a copy of the contract. There is no mention of calves at foot or calves in utero. There is no mention at all and there is something like \$1.5 million worth of cattle there that has been totally ignored as if they are meat.

CHAIR—No. 4?

Mr Wright—In trying to be practical about it, I tried to consider a method whereby you can get accountability between one statutory body and another one. You will notice the Australian Taxation Office is there. Within the company there were substantial tax losses which had been accumulated for the purpose of developing further property. We developed a lot of country in Northern New South Wales and this was an opportunity to develop more in the Central Highlands of Queensland. Those tax losses were very valuable to do exactly that. We are developers whether we like it or not. We take great pride in converting ugly barren country into something that is highly productive. There seems to me to be no check off between the

Australian Taxation Office, and if there is and a controller is in place, he is the controller and the Taxation Office says, 'You're not the client anymore, the controller is.' You never get access to any of that information. It goes into a thing they call the secrecy file.

I have written to all these people and I get this same team effort, which is pass the parcel. Even with the Institute of Chartered Accountants, which I heard mentioned earlier, their attitude was, 'The Australian Securities and Investments Commission will make the decision as to whether this person should be struck off or not.' He is on public record breaching the law by a \$1 million error in no more than a \$3 million transaction in total. Still alive and well and the prudential regulator is saying, 'We don't want to know about that.'

In the case of stamp duties, I do not think that anyone to this day at the stamp duties office would know whether a \$3,000 cheque they have is attributable to 300,000 acres or 600,000 hectares. I do not think there is any check-off to say per acre or per hectare. Stamp duties are accountable? I do not think it exists.

CHAIR—No. 5 is severe penalties for corporations failing to notify conflicts of interest. That is a transparency thing.

Mr Wright—We have probably had explanations right through this inquiry in relation to that, but I find it extraordinary that the bank could suggest, for example, that the receiver is totally independent of them when they have a solicitor in common, and that is what transpired in this particular instance. If that is not a conflict of interest—it is as good a cartel as I can see. It is just a team effort to destroy business.

CHAIR—No. 6 is return of commissions.

Mr Wright—I have almost explained that earlier, too, in relation to commissions that have been paid. When they are added up in a sale of this scale it is a lot of money, and a very small agent can retire tomorrow if he gets a commission once in this instance. That is how big the sale was. At the end of the day, thinking ahead—and this is one of the biggest pastoral houses in Australia, Elders—I think they took the view that this property is so big we will cut it up again in the next 12 months and we will get another commission. Just add up the commission not on the first sale but on a potential 10 or however many it takes to cut it up into smaller sizes. They get commission every time around. It is a factory for them.

CHAIR—You have made that point. I agree. No. 7 is publication of breaches of law. I think that it became case law. Cases are reported, aren't they?

Mr Wright—With the case that I have given you I inquired of the Supreme Court registrar as to what happens when it is published. For a start a fee applies so that precludes, for example, the *Land* newspaper having any great interest in the sacrificial sale of our business. If you think of the *Land* newspaper it is funded by the back of it. All the agents pay the advertisement and the front of it is the detail the agents want, not really what producers want all the time. I am suggesting that when there is an error made of this magnitude the egg should be unscrambled, not just left for us to wither and die.

CHAIR—And compensation for errors proven by re-evaluation?

Mr Wright—Let me explain there. The valuations were done on the property in the Central Highlands of Queensland. We virtually had a valuation done when the mine came to sever the property. We tried to use New South Wales legislation, which refers to a thing called ‘just terms’. It is really based on the earning capacity of the business. In other words, if I had a business plan of five years that was going to be sacrificed as a result of some action by a bank, receiver, BHP or anybody else, I should be entitled to the earning capacity of that business over at least five years. The mining company will go into a piece of ground for 10 years, literally destroy it in front of your very eyes, and then walk away from a mullock heap. I think that is an absolute indictment on my grandchildren’s and their children’s future. It is a shocker. If you go from here to Muswellbrook you can see what I mean. I know all about real valuations.

I maintain that the business plans that we had in place were conservative and they were accurate, but they proved to be a bit too conservative at the end of the day because we dropped below the line on the computer screen where the bank says, ‘We think they’re insolvent.’ We dropped below that line because in a compensation package that was put together by the ANZ Bank for the takeover of this mine—an amount of \$825,000—was withheld for six months while the documentation was done for BHP to take over the mine. That withholding of \$825,000 was not our money until it was banked. Again, we dropped below a threshold because of a bank action that withheld funds until their other client was ready.

CHAIR—No. 9 is about bankruptcy.

Mr Wright—In our particular case we were issued bankruptcy proceedings by the ANZ Bank well before our assets had been sold. There are only two directors in this company, my wife and I.

Senator WILLIAMS—That is crazy.

Mr Wright—There were about \$6 million worth of assets in real estate in Armidale, and you have copies of that information. They had not been sold until after they had already issued bankruptcy proceedings against us. The dates are there. It is quite clear.

Senator WILLIAMS—Can I just ask a question?

CHAIR—Of course you can.

Senator WILLIAMS—I find that amazing. How can someone issue bankruptcy proceedings on you when your assets have not been sold and they do not know how much money they are going to get for the assets? Surely you would wait until the end of the wash-up of the assets to see if there is money still owing at the end of it and then perhaps proceed down that road. That is simply having the cart before the horse, to issue bankruptcy proceedings before the sale of the assets. I find that quite amazing.

Mr Wright—I think you will find that there is a strategy involved. People, on the one hand, perceive that you may be a risk in a five-year drought and they also perceive, in the same breadth, in this so-called competitive environment that we are all in that they can find a bigger and better client, they will do it. BHP were bigger and better than we were.

CHAIR—It is an unusual situation; I agree. No. 10 is about professionals being struck off or suspended. We have dealt with that in this committee already.

Mr Wright—Certainly with Mr Reith this morning. I think they put my case very well this morning.

CHAIR—Yes, indeed. I agree. Compensation for damages is a fair point.

Mr Wright—It is in relation to a trademark. In this particular case one of our strategies to try to protect ourselves was to take out a trademark, which we did. We had had the trademark for some 12 months. There is a copy of it in the little green bag. That particular trademark was quite well known in the cattle industry. The trademarks office decided, because of the length of time the new owners had the property, that they would develop their own reputation; therefore, they were entitled to it. So, they issued two trademarks. I would ask the committee to consider that, if you had a trademark issued by Coca Cola and then someone issued another one, what would be the outcome? The bottom line is we could not contest any of this. They knew that we could not, and so they headed us down this path of destruction.

CHAIR—That is an odd story in a way. If you have a trademark then you have a trademark, I would have thought.

Mr Wright—I do not think there is anywhere else in the world that you would have two trademarks the same and be happy.

Senator WILLIAMS—Yes.

CHAIR—Clear guidelines as to the difference between criminal and corporate law when errors in excess of \$1 million are made. This is addressing the issue of using the corporate law for white-collar criminal purposes.

Mr Wright—The judgment is only a small part of this whole debate. It is only a tiny part. Pardon the French, it is a bit like being a little bit pregnant. You are either right or wrong. In this particular instance there was a \$3 million value on the commercial cattle this fellow sold at a discount of about \$1.5 million. There is a massive error in relation to these cattle. Again, there was still no consideration of their fertility, their genetics or their future. There was none. It was just that they were meat.

Senator WILLIAMS—Crazy.

CHAIR—No. 13 is using bankruptcy to avoid criminal proceedings.

Mr Wright—By way of explanation, in effect, as I see it, when a receiver is appointed he is a controller. Therefore, he should be a de facto director. If you look at Corporations Law as it should be interpreted, that director, de facto or not, should be acting in the best interests of the government, the Taxation Department, the Australian Securities and Investments Commission—everybody. But he seems to me to be capable of vandalising sound small business just for the sake of his own agenda.

CHAIR—That is fair enough. That is a valid point. Are we up to 13?

Mr Wright—I am suggesting to you that there is a strategic alliance between a bank, its receiver, its liquidator and its administrator. There is a team effort. I am not apologising for the fact that I believe the Australian Securities and Investments Commission are in it. If you cannot get a cross-reference between a bank and the receivers report to affairs, then it is a nonsense. With the other statutory bodies there should be a cross-reference to the bottom right-hand corner of the ledger, and it should be clear and concise to every Australian. It is just not accountable.

CHAIR—Item 14.

Mr Wright—I simply reiterate what I just said. The buck stops at the top. If the banks appointed the receiver and the receivers are the wrong appointment, as this judgment shows, surely the bank should make good. The judge, in his wisdom, said in this judgment that the receiver could not blame the professionals down the line that he appointed. The bank should ensure that the person they have appointed knows what he is doing. This bloke had sold one meatworks and he thought he knew all about the cattle industry. It is in the judgment. It is referred to. It is extraordinary.

The last one, to help you along the way, is that they should certainly be independent of the financial institution that appoints them. This was a team effort to destroy our family. Thank you.

CHAIR—Thank you. Senator Pratt.

Senator PRATT—We have been through in detail the changes that you would like to see. I would like to return to the big picture in terms of an overall framework that takes the emphasis off it being too easy to liquidate businesses that may well still be viable. Your suggestions, while important, might not drill down to the entirety of that specific problem. Would you agree that that is the key issue at hand here, and we need a system that can tackle that?

Mr Wright—Senator Williams was horrified when I said that in the process they had assets far and away more than our debt that they sold much later. The perception is that the receivers are a separate entity and so the bank interest and penalty interest rocks along here while the receiver runs up costs like you have never seen. We had drought feed bought on this property that you could not jump over with no drought. It was purposeful. You could see it happening.

Senator PRATT—Whilst it might be the receivers' professional obligation to maximise the assets in order to return that to creditors—and if it was under administration then any balance would return to the owner of the business—if you are taking a viable business and liquidating it, you are supposed to have a professional at the forefront of that that is supposed to have return the full value to those who have a legitimate claim to it. It seems to me that, on one hand, you had a receiver with an interest in liquidating it as quickly as possible.

Mr Wright—Under the bank's instructions, yes.

Senator PRATT—Which would mitigate against actually realising the full value of your asset.

Mr Wright—The assets that they withheld had about \$600,000 annual income. They severed the business from a geographical network of rural properties to off-farm investment. They first severed the cattle away from it. They cut that to ribbons, so all that was left was real estate. It was a pretty lucrative business. We were advised that the receiver was totally separate to the bank and they did not know anything about what he was doing. They knew everything about what he was doing. They had a solicitor in common.

Senator PRATT—Do you think it was calved up in a way that maximised the return to the receiver and the bank, rather than managed in a way that realised the maximum value of the asset?

Mr Wright—The maximum value of the asset was never, ever touched on. I know you cannot quantify it. This is about history. It is about a long, hard century and three-quarters of impeccable breeding, importing sires from the UK and the United States when it was possible. Importing sires from Europe to make sure that we were doing what we knew best, which was breeding cattle. By way of example, the stud which is mentioned on one of the brochures that you have got, the Hereford Stud, which had been in the family for 170 years, went to the slaughterhouse.

Senator WILLIAMS—That is disgraceful.

Mr Wright—I can tell you that you can buy a bull from the Royal Sydney Show, which has just finished, and pay \$60,000 for that bull and get \$60,000 back in semen rights in one year. The bulls in this particular instance were sold at a meat value. Sorry, it is just illogical.

Senator PRATT—Was it incompetence, a deliberate act just to take the fees and charges out and get rid of the asset as quickly as possible or was it a bit of both?

Mr Wright—I think it was a combination of both. When these things happen your judgment gets clouded. The emotion of it is terribly difficult to manage. At the time it happens you just cannot believe it. I can relate to other farmers that I have represented that are no longer here. They have committed suicide because of this sort of thing. They are not here anymore. I think it was a combination of a deal done in respect of the Queensland property, and another deal done in respect of the New South Wales property with a friend of BHP who does a lot of their earthmoving works. It is as rotten as a chop, pardon the pun.

Senator PRATT—If there is systemic malpractice in the activities of receivers, liquidators and administrators across the issue—I am not necessarily saying there is—surely the professional standards and professional integrity needs to find a way of putting at the heart of these activities maximising the value of the assets that they are dealing with for all of the concerned parties, whether they be the business owners or the creditors. It seems to me that there is currently not enough emphasis on that important fact.

Mr Wright—I think your former remarks about selling the business quickly has been at the forefront. That is the problem. If you know that you have \$2 million worth of calves hitting the ground in spring and you are going to sell the property after the spring, you have got another \$2 million worth of calves running around, then it is a bit of a different value between March and August. They just totally ignored it. How on earth can that be commonsense? It is immoral.

Senator PRATT—Thank you for your courage in coming along and talking about your family circumstances.

Mr Wright—Thank you for the opportunity, because it is the only one we have had for 10 years.

Senator WILLIAMS—Just in closing, I would like to say that one of the serious problems that I see in the industry that we are investigating is that the bank has appointed a receiver to run your property who had absolutely no idea how to run a rural property, a beef breeding property. Would you agree with that?

Mr Wright—I could tell you stories about my association with the receiver and his appointees. In the judgment there is reference to one agent who was on the property. I said, ‘No-one is going to look at this property without me in the vehicle.’ We pulled up at a mob of cattle in the yard and I said, ‘What do you think, if you’re a valuer, those cattle are worth?’ They were in the yard. I had just sold them that morning. He gave me a figure which was a quarter of what I had sold them for that morning. He said, ‘I’m not the cattle agent. I’m only the land agent.’ As I said before, if you take the engine out of the car you have got a body there and an engine there, but it will not go anywhere.

Senator WILLIAMS—That is right.

Mr Wright—That is what they did. They gutted the business.

Senator WILLIAMS—It is disgraceful.

CHAIR—That concludes that segment. Thank you, Mr Wright. That was very interesting evidence. I will hand over to Senator Hurley as chair, briefly.

[2.35 pm]

MAHER, Councillor Edward James, Deputy Mayor, Armidale Dumaresq Council

ACTING CHAIR (Senator Hurley)—I welcome the representative of Armidale Dumaresq Council to the table.

Councillor Maher—Thank you very much for the opportunity to make a presentation on behalf of the Armidale Dumaresq Council. I would like to thank the Senate for pursuing this. As has been stated by earlier speakers, there has been very little action, certainly in public, about the developments that have occurred in the administration-liquidation industry and the problems it has had. I would particularly like to thank Senator Williams. I know he is from up my way and I have heard him on the radio and in the press pushing for this.

I should probably state at the outset that I was a member of the YCW Leagues Club for probably 20-odd years. I was secretary of the juniors up to under-16s for some time. I attended many functions there and knew just about everybody that frequented the club. A good friend of mine actually founded the club and on occasion even mortgaged his home to keep the place afloat. The club was built on volunteer labour and operated in a socially disadvantaged part of Armidale for many years.

I became interested when the board of the club had a meeting of members. They decided they were going to close the place. I actually spoke against the closure, urged them to form a committee and investigate ways in which the club could stay afloat. We met several times and made suggestions, but they fell on deaf ears. The next thing I heard was that the board had taken the decision to go into a voluntary administration and had appointed Mr Stuart Ariff from Newcastle as the administrator. That decision was taken without any reference to the membership of the club and Mr Ariff took over some time in 2005.

The members of the club and the Armidale community realised that the club needed to improve, so people patronised the place a lot more than they had in the past. There were record crowds at many functions. The club seemed to be doing extremely well. Indeed, the manager told me that they were banking, on average, about \$25,000 a week, which was pretty good for a small club. For all intents and purposes it appeared that the place was trading its way out. There was only one financial statement that I am aware of that was ever presented to the members and that was about 2006. I have a copy of it here with me that I can provide you with. It showed that in an eight-month period the club had lost \$107,000. Of that figure, \$97,000 was Mr Ariff's fee. I believe the club owed the St George Bank, the major creditor, approximately \$380,000. There was speculation towards the end of his administration that the club owed close to \$1 million, certainly \$900,000-plus.

As I said, the manager who had been there for about 21 years—not as manager, but as an employee of the club—and the other employees there worked tirelessly to make the place function. They banked the money into accounts that were controlled by Mr Ariff and they believed that the St George Bank was being paid. The St George Bank apparently was not being paid and nobody realised that. The board, the members, the manager and his staff did not know

that. I am told that the St George shopped around and sold the debt. A Mr Karas from Melbourne bought the debt and then appointed a Mr Vartelas, a liquidator, to sell off the farm, so to speak. He moved on the poker machines and sold those. That is an interesting point because I am told later on by others that those poker machines ended up at Rosebuds, which was also controlled by Mr Ariff. Mr Vartelas was appointed over Mr Ariff and took the decision, on instruction, to sell off those poker machines. Anybody that knows anything about clubs will realise that once the poker machines are gone a large revenue stream is also gone.

The club members struggled on bravely. In fact, Toohey's breweries cut off supply of beer. The club workers used to go down to the town, buy beer out of their wages, bring it back and sell it through the club. It was an amazing effort and they ought to be commended.

At the end of the day Mr Ariff decided that the place would close. He called two creditors meetings and at both he put forward the resolution that the club close down, that the creditors take that decision and that the records be destroyed. I attended both of those creditors meetings as a representative of the Armidale Dumaresq Council because it was owed rates, and a number of other people came along. I think Mr Ariff thought that the creditors would just want to close the place out of revenge and was quite shocked to find that even though these people were owed money they actually wanted the club to stay afloat, because they recognised the importance of this club to the community. It was in a disadvantaged area. It was close to the Aboriginal mission. It is one of the places in Armidale where white and Indigenous people can socialise. It was the life blood for many people. Some of the people who were there on opening day 25 or 30 years ago were there on the closing day and probably spent most of their time there. I knew pensioners who went there to stay warm in Armidale because they could not afford the heating. It was a place where a number of sports were played and it had a great feel about it.

Nevertheless, Mr Ariff came forward with his proposal to close the place at the first creditors' meeting. I had the media organised. I think he thought he was dealing with some country bumpkins. There was quite a protest against the closure and the creditors actually refused to support his motions. He gave us time to prepare a case and went away. There was another meeting called and at that meeting he told us that he had found somebody to buy it and keep it floating as a club. That never, ever happened. It has now been purchased by one of the local schools and with a Commonwealth grant has turned into a trade training centre. That is a good use for it but, as I said, it was a very important amenity to the people in that particularly disadvantaged area.

There are a few things that ought to come out of this. Firstly, it is surprising for the layman that somebody could cut a swathe through the commercial industry and clubs—I know there is another club that has been speaking here today—and operate that way for so long with no action taken against them. Therefore, I am most concerned about the industry's belief that they can self-regulate. I think it is quite clear. I do not accept the argument that Mr Ariff was just a one-off. Even if he was, the fact that it took so long for the industry to deal with him, and then they still did not do it properly, is indicative of a major problem in that particular industry.

We need a much greater scrutiny of this industry. I support arguments to register liquidators and administrators, to monitor their progress and to provide ongoing education for them. I think the industries have failed to pull in a rogue and, as I said, he is just one of a number of them.

I have a concern about the behaviour, or the lack of action, of ASIC in this. ASIC were notified about Mr Ariff and YCW several years ago, and after an initial acknowledgement of receipt of a letter the supporters of the club heard no more and have still heard nothing. The point was made earlier that there ought to be some more communication coming in to those who complain.

There were complaints and concerns expressed to local members of parliament, and I have seen correspondence signed by federal ministers relating to this issue. Again, one would think if it had gone this high then action would follow, but it has not. As far as I am aware, YCW has not made any of the regulatory agencies. There has been no action taken over YCW and Rosebuds in Newcastle is following down the same path. What is happening to these? These are major community organisations. This is why our council got involved and why we put a motion through calling for an inquiry into this industry and regulation, and that is why we took that motion to the New South Wales local government conference. At that meeting in Tamworth well over 600 people voted in favour of an inquiry. I congratulate the Senate because I know that a lot of the good work done by the Australian parliament, particularly at the Senate, is done at the committee level. I keep telling my university students that and I hope I can continue to say that.

This is white-collar crime. This is criminal activity. We ought to be pursuing criminal sanctions through law enforcement agencies and, if the law is not tight enough, then we ought to be doing something about it.

I was not here this morning because we had a late council meeting last night, but I drove down this morning. I had a chance to look at some of the submissions and listen to the people who have been speaking since lunch. They have called for this sort of thing. They have also raised concerns about the relationship between insolvency agents, administrators and banks, and the cartels that are established between banks, lawyers and others. I think that relationship needs to be looked at and I believe that in all of these areas there ought to be a code of conduct developed. Local government and you people have it, so why haven't these people got a code of conduct and some stiff penalties for breaches of that code?

I listened to the professor from Newcastle University earlier who talked about the need for a branch of ASIC to investigate small business, and I would add clubs, societies and so on. That may be an opportunity, or it may be a separate body. I will leave that to you to make your recommendation. But it is quite clear that ASIC has not done the job. It is quite clear that many people have been adversely affected.

I ask you to think about the human impact there. I know people at YCW. I will give you an example. The manager spent 21 years in that place. He gave his heart and soul to keeping that place afloat in the belief that the money that he was raising was going to pay off the debt and keep that club floating. That man has nothing now, nothing to show. Mr Ariff, in his statements, showed he was paying the superannuation. He did not pay any of that. There was no long service leave for these people, no holiday pay. As I said, he is left with nothing after 21 years of service. He went through GEERS. He has been told he has no opportunities to go down that path, and that might be something that you might like to look at. What happens to people who are employees who get caught up in all of this? Where do they go to get some compensation, because in my view they are owed it?

As I said, at the two creditors meetings that I went to, Mr Ariff came in with nothing. There were no financial statements. He did not have anything written on the back of a stamp. He came in and said, 'These are my recommendations.' People said, 'Give us a look at the situation.' There were no financials at all and he wanted people to make the decision to close the club down. Well they were not prepared to take that decision. At the second one they did because they believed that he had a purchaser for the club and it would continue. He had somebody on the phone at the second one who was purported to be representing the Commissioner for Taxation. I asked the question, 'Is the tax office going to wipe the tax debt?', and the answer came back, 'Yes.' That one ought to be pursued. There are a lot of those sorts of things.

Creditors should be able to have a meeting to remove an administrator that they have concerns about. I think that is very important. I think if some of these regulatory bodies have failed in their duty then we ought to be thinking of some sort of compensation. Maybe ASIC should pay for some of the damages that have been caused to individuals and to organisations. I am happy to answer any other questions.

ACTING CHAIR—You mentioned that you had a copy of a financial statement.

Councillor Maher—Yes, I do.

ACTING CHAIR—Would you like to table that?

Councillor Maher—Yes, I will.

ACTING CHAIR—Thank you. As part of your submission you talked about the debt being sold to Tom Karas who appointed Mr Vartelas as the liquidator and that he then sold 14 poker machines. To your knowledge did the club have any involvement in that process?

Councillor Maher—No. They actually tried to take legal action to prevent it and they were told by Mr Ariff that this was a temporary thing and that they would be back in a week or two, but that never happened. They were gone and I am told later that a good number of them may have ended up at Rosebuds, which was also being administered by Mr Ariff.

ACTING CHAIR—Was it on Mr Ariff's advice that they did not attempt to intervene?

Councillor Maher—Yes.

ACTING CHAIR—Most unfortunate. You have also appended quite a few forms and other bits of information which are quite interesting. One that I found interesting was some information from Stuart Ariff Insolvency Administrators which was the schedule of hourly rates and their disbursement rate. It sounds, from your description of the amount of fees that went to him, that he did not particularly stick to that schedule.

Councillor Maher—I suspect that is true. The other point is the creditors; the electricity was not paid. We were told at the second creditors meeting that the bill was \$7,000 and Mr Ariff promised that he would pay that. I went to the club on the Friday and they were running raffles. The staff said, 'Please patronise us. We've got to pay the power bill.' I said, 'He just told you he's paying it.' They said, 'No. He didn't give us \$7,000. He gave us \$700.' Country Energy

were happy to take that for a week, but they wanted another \$700 the following week and so on. They were told to get it across the bar. The TAB was not paid. The alcohol was not paid. Money was owed, I am told, to people who did repair work to the ceiling and apparently an insurance policy was paid for damage to a roof, but that was not passed on properly to the tradesmen who did the work. A lot of people got burnt, but all of those people still wanted the club to stay afloat. That is the point.

I am concerned that you can have creditors' meetings with no financial statements whatsoever and a refusal to answer what monies were there, what was available, what had been paid and what the situation was. He did not supply them to the creditors. The members were totally out of the picture after this and never heard another thing, but everybody believed that they were supporting it and it was a viable operation.

ACTING CHAIR—The problem this time is that the club would not have been aware that it was in breach of the requirements for an administrator because they were not aware at that stage that there was a serious problem.

Councillor Maher—I think that is right. I was never a member of the board, but I did try to get a group to get together to try to buy out the club or lease it to keep it afloat. We had people in town who had made offers. They had great difficulty in getting Mr Ariff to answer the phone. They were trying to put through figures, I am told, that were pretty close to what it eventually sold for, but they were not in the ball park, there was no interest in seeing it continue that way.

ACTING CHAIR—Thank you. I will hand back to the chair.

CHAIR—Senator Pratt.

Senator PRATT—It certainly appears to me that Stuart Ariff has established himself as the Dr Patel of the liquidation industry. Senator Hurley has touched on looking at the kinds of activities that were taking place which were clearly manifestly corrupt. There are links here between Mr Ariff, Mr Karas and Mr Vartelas. I am unclear about the extent to which Mr Karas, who as I understand it bought the debt, would have known that the club had been making payments off that debt but in fact those payments had not actually been taken off that debt. Do you know if he was aware of that fact?

Councillor Maher—I would not have a clue. Mr Karas is a name that I have seen in the media. I have never met the man. I just know that is how it all happened. He gained control of the club and appointed Mr Vartelas, I am told, to be the liquidator. In some of the documentation you have got his fee, schedules and so on. He was instructed over the top of Mr Ariff to sell the poker machines, but I am told that some of them ended up in Rosebuds. That needs to be checked.

Senator PRATT—I am unclear if other members of the committee know where this is at. I am interested in the extent to which any criminal activities that took place in those transactions are currently being properly investigated. Is anyone on the committee aware of that?

Senator WILLIAMS—I have made some phone calls about this very issue and I am quite amazed, with the evidence that we have heard in this committee and obviously evidence that

ASIC heard and through the court cases, you must ask the question why criminal charges have not been laid. I am sure that if any of us in this room had stolen \$20 out of the till and run down the street there would be someone chasing us. That is one of the amazing things and no doubt the committee will be discussing that when we summarise for the recommendations on that very issue. There is an ongoing wealth of information coming to this committee about this particular liquidator where funds disappeared. In your case, the club was paying him money to pay their debts, electricity and so on. He has kept the money and has not paid any of those bills.

Councillor Maher—That is right.

Senator WILLIAMS—A barrister from Melbourne gave us some documents about when he applied for his PI insurance. I think his income for 2006 was over \$3 million, in 2007 it was \$2.3 million and in 2008 it was \$2 million. This money just does not evaporate. It has obviously gone somewhere, whether it is in other names or other investments. I would like to see it all followed up and perhaps that money taken back to pay the people who rightfully should have that money.

Councillor Maher—I could not agree more. I think there is a public confidence issue here as well. If people are able to get away with this sort of thing, then what does that tell the community? You are quite right. If somebody walked into Kmart and walked out with a handkerchief in their pocket that they should have paid for, then it is in the paper and they are prosecuted. We have cases here where people have lost millions of dollars. Think about the social cost as well. It is the money, the impact on community and the impact on individuals. I know that poor manager, for instance, will be working for many, many years because that was his nest egg and it is all gone.

Senator PRATT—You would certainly agree that here you have had a vulnerable community that has been the victim of behaviour that is or at least should be criminal—

Councillor Maher—Investigated.

Senator PRATT—that has been taking place under the guise of a legitimate profession.

Councillor Maher—Yes. I think that is correct. We often hear the term ‘white-collar crime’. It is probably a lot worse than a lot of the other crimes that we see on a regular basis in the media. I think the matter needs to be pursued. There are a lot of people who are owed compensation in business and in organisations. I wonder how many others we have not heard of, at this stage, that will emerge following the publicity surrounding your inquiry.

CHAIR—Probably lots. Senator Williams.

Senator WILLIAMS—With the PI insurance of Mr Ariff, when a lot of these incidents actually occurred, if his insurance was paid up at that time, even though it did lapse afterwards—and we are fully aware that PI insurance was compulsory but however, his has not lapsed—if, for example, if something happened with the wrongdoing of money in say 2006, if the PI insurance was paid up in 2006, then that means that the insurance is legitimate. Would you know?

CHAIR—I do not know what the terms and conditions of the insurance are.

Senator WILLIAMS—What I am saying is that if you had your house insured and you paid the premium in 2006 and you did not pay it in 2007, but a storm hit in 2006 then surely while your house is insured you would be covered.

Councillor Maher—One would have thought so.

Senator WILLIAMS—I would hope the same could be in the case of Mr Ariff. It would be interesting to know when his PI insurance lapsed, when he stopped paying it, and whether up to those dates his PI insurance was in order. I think many in this room and others with interest in this inquiry would like to know when he actually stopped paying and his insurance collapsed. We would like to know exactly when that happened to put it into perspective with other dates so people know when things have happened as far as they are concerned personally.

CHAIR—I suppose the PI insurance would only apply if he had acted legally, wouldn't it?

Councillor Maher—Probably.

CHAIR—If he had acted unlawfully then it would be void.

Councillor Maher—That is right. Good point.

CHAIR—It does not necessarily cover every situation that we have heard about.

Senator WILLIAMS—It would break the insurance company.

Councillor Maher—What sort of compensation is there for people who get caught up in it through no fault of their own, for instance, employees who are left with nothing? GEARS will not help them. No other avenue they have pursued will help them. Where are they? They have nothing.

Senator WILLIAMS—I want to deal with when the poker machines were sold. Obviously Mr Karas was holding the mortgage on the club then. Do you know how much they got for the poker machines?

Councillor Maher—I had heard a figure and I am trying to use my memory here, but it might have been \$260,000 or something in that order. I could certainly find that out for the committee.

Senator WILLIAMS—The land has been sold with the building and so on.

Councillor Maher—The land is 17 acres with a clubhouse. I described the clubhouse and so on in the submission from the council. I am told that it sold for \$430,000.

Senator WILLIAMS—If there is a mortgage for Mr Karas for \$400,000, let us say he cleared \$450,000 for the land and a couple of hundred for the poker machines, then that is \$650,000. Were there any monies paid by the liquidator to creditors?

Councillor Maher—I think the only ones that were paid were the Armidale Dumaresq Council for rates and I think Country Energy were paid for the power.

Senator WILLIAMS—That would have to be paid before the sale could proceed.

Councillor Maher—Yes, I would think so. There is a fair bit of change left.

Senator WILLIAMS—Yes.

CHAIR—Do you think many other local governments are caught up in this?

Councillor Maher—We have a concern about businesses and farms that are in our area. The matter did come up at the local government state conference in Tamworth and there was unanimous support. Nobody spoke against it because I think people are all concerned about this sort of thing, particularly in country areas. You do not want to see a business close, a farm go under or a club go because these are things that are all part of your community. They provide jobs. They provide a social outlet and so on. Nobody wants to see them go under. I imagine that Rosebuds is in a local government area here, Newcastle I guess. We are the ones that took it up because of the quite obvious happenings that were going on in Armidale at the time.

I might add that at the creditors meetings the mayor, myself and the general manager attended. I think that surprised the administrator to see that the council was coming to these things.

CHAIR—Is there any advice service that local government can access about these sorts of commercial matters?

Councillor Maher—As I said, we took the matter up with the state body and I thought they were going to make a submission to this inquiry. I guess there is ASIC. I know they were informed. Local members of parliament received notification. They passed it on to ministers, got replies back and they went back to the people who wrote to them, but that was a couple of years back. You think when things have gone that high then surely there is some dust swirling around now. It just seems to be pretty dead.

CHAIR—Do you see it as a big and broad problem that really needs to be addressed?

Councillor Maher—I think so. At the meetings to try to save the club, the general manager and the mayor attended some of them, trying to look for a way in which we could keep that club afloat, but we ran into the same problems. I recall, in one instance, where the general manager made a call to Mr Ariff and had great difficulty getting through to talk about the matter, particularly when there were people in the community who were prepared to put money up to save the club and keep it operating as a club.

Senator WILLIAMS—We have heard a lot of evidence in Canberra, Adelaide, Sydney yesterday and here today. There is no doubt there has got to be some changes to the industry to make sure that it is fair and does the right thing. Perhaps we have to have a body where people's complaints can be listened to and if their complaints are legitimate that they are acted upon. Would you like to give us your thoughts on how you think this should best be legislated, changed or whatever requirements need to be carried out through the parliament, especially with reference to your issue about removing a liquidator? Mr Fong from Carlovers went through \$1.8 million to remove a liquidator. The same liquidator, Mr Ariff, today still has control of those

assets. Would you like to add something? You can speak freely with parliamentary privilege of your thoughts and your ideas because we are here to listen.

Councillor Maher—I heard the earlier concerns about the inability of ASIC to deal with these issues and the amount of money. The taxpayers are expecting some efficiencies and some action when these matters are referred. It may be another special agency that can be established. We need to know where we send it to in our federal system. Sometimes the man in the street has difficulty understanding who is responsible. We need one organisation to which we can lodge our complaints, it may be online, to get a quick response and then after a review by that organisation, there should be follow-up. That is important. We need an outcome.

Several years ago people were writing. The club has gone and we have had no explanation of how the money was divvied up and what action was taken. What about all these other dubious activities that took place? Is there anything happening there? These matters need to be pursued. The community are expecting some action in this area. It was certainly highlighted, not just in the local media, but it made the national media. I am thankful for the correspondents in *The Australian* who pursued the YCW issue, as they have with many others. It is only when it got to that that we started to see some action in some respects.

Alarm bells should have been going off five years ago with this fellow. It is all well and good to say, 'He's a rogue. He's a one-off', and so on, but how could he run for this long and do so much damage, and his own industry agencies have not pulled him into line or dealt with the problem? He is not helping the reputation of the industry at all. I believe that that industry should not be left to self-regulate. I think government has to take a responsibility to be part of that process.

CHAIR—They are all good points. Senator Pratt.

Senator PRATT—I wanted to make an observation. You have talked about the community's fight to save its club, but you clearly were not aware for some time that really you were fighting against a criminal activity. You were all working very hard with goodwill towards and end—

Councillor Maher—We were.

Senator PRATT—but had no idea that all your activity and work was simply funnelling money into other's pockets.

Councillor Maher—That is exactly right. The community came out of the woodwork to support that club. They had big crowds coming week after week for functions, raffles and you name it. People had worked there for years. As I said, the manager had been there for 21 years. He knew when the club was humming and he told me that sometimes he was banking up to \$25,000 a week. The club was doing really well. Everybody thought the more they put into the place, they were saving the club; the debt was being paid off and pretty soon Mr Ariff would give us a call and tell us that we can get back, have a board and run the show.

Senator PRATT—Had you not been exploited by a corrupt administrator I certainly believe you clearly would have continued.

Councillor Maher—The club would still be open and operating. It would probably have been back into its own administration. It was a wonderful facility with 17 acres of sports grounds. It was a good clubhouse with a restaurant, saunas and so on. There was plenty of scope for further development.

Senator PRATT—A good administrator would have been saying, ‘Yes, you’ve got a good chance of saving the club if you keep going’, or, ‘No, we might as well cut your losses now.’

Councillor Maher—Yes. It was a long administration. He was appointed in early 2005 and it went through until 2006.

Senator PRATT—Clearly he was prodding the club to keep generating money.

Councillor Maher—Yes.

Senator PRATT—He was saying, ‘You’re doing really well.’

Councillor Maher—That sort of thing. ‘Yes, it is going well.’ Nobody saw financial statements or anything as to how it was going, except that first one, and I did not see that until some time later when we were trying to save the club. Somebody passed it to me. We looked at it and said, ‘Have a look at that, \$97,000 for his fee and they lost \$107,000.’ In those statements, if you have a look at them, he has indicated that he paid superannuation and things like that, but they were not paid.

Senator PRATT—From the committee’s point of view, there should be a set of laws under which such behaviour can be criminalised and, if there are not, then we really need to ask ourselves a question as to why there are not.

Councillor Maher—Yes. I think that is quite clear. Have a look at their behaviour. There is documentation around, but there are plenty of witnesses who attended these meetings. That is the first creditors’ meeting that I had ever been to and just to think that somebody can come in and say, ‘Close down the club’, but there is no paperwork; there are no financials; just, ‘Take my word for it. Close it down.’ That is why people would not accept it and would not do it.

Senator WILLIAMS—You were not getting any financial statements, no progress reports or anything like that. Did anyone ever report that to ASIC or any authority that this man was simply not giving any detail of how the club was trading? Your manager would have known if he had a \$25,000 week that it was a good week.

Councillor Maher—Yes. He just banked the money and was under the belief that the club was trading well. He was as shocked as anybody when they confiscated the poker machines. There was some talk of taking action. I think they might have tried to mount a legal action to block it and they were told by the administrator, ‘It’ll be fine. It’ll be back in another week or two. It might take us a couple of weeks to get them back.’ They kept the spot reserved for the poker machines and they never came back. That was really the kiss of death. It was just a slow bleeding of the club.

As I said, towards the end, the workers were taking the money out of their own pockets, going down and buying the food for the restaurant, the beer, wine and spirits out of their own money and then trying to recoup their wages back over the bar and pay for the electricity and all the other bills. It was sad to watch the whole thing unfold the way it did, and it was deliberate.

CHAIR—A very bad story. We have some additional documents to table.

Senator WILLIAMS—Have you finished with Councillor Maher?

CHAIR—Almost. Does anyone have any more questions for Councillor Maher?

Senator PRATT—No.

CHAIR—Do you wish to say anything in conclusion?

Councillor Maher—Just to thank the committee for investigating this matter. I think a lot of us who have been one way or another affected by it are feeling that this is the first time they have had an opportunity to air their concerns. I am sure that you have had some pretty good submissions from some of the people who have been adversely affected in business. You have had people from the university sector who are able to analyse the policy issues and so on for you, and I am representing the community. I saw the negative outcome for our community, for individuals, for the club itself, the sporting bodies and so on. Kids lost their football grounds. Pensioners went to the place. This was their social outlet. This is where they network with people and so on. They lost everything. Tears flowed on the last day and it was really sad to be there on the last day to see that sort of thing happen. It has an impact on individuals, communities, organisations, and I just hope that out of all of this comes some really positive regulation which will do as much as possible to prevent this sort of thing ever happening again. Thank you.

CHAIR—Thank you. Senator Williams.

Senator WILLIAMS—I have been asked to table a statement and some documents from Brian Mitchell Motors and others. It is basically a brief submission or a summary. They were also one of the Ariff victims, if I could put it that way. I would like to table those documents.

CHAIR—Yes. Thank you. We will conclude this hearing. I thank the witnesses, the public, the staff and Hansard for participating.

Committee adjourned at 3.15 pm