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9th February 2017

Our Ref:INSOLVENCY31A:yd:Ray Barrett

Mr A Ashford
Senior Accountant
Insolvency Practitioners
Australian Securities & Investments Commission
GPO Box 9827
PERTH WA 6001
By email:policy.submissions@asic.gov.au

Dear Mr Ashford,

CP276 REGISTERED LIQUIDATORS: REGISTRATION DISCIPLINARY ACTIONS AND INSURANCE REQUIREMENTS ("CP276")

In response to your Consultation Paper 276, I make the following observations:

1. For the purposes of this letter the following abbreviations apply:

    1. The senate inquiry means "*the regulation, registration and remuneration of insolvency practitioners in Australia: the case renew framework".*
    2. The Act means the *Corporations Act 2001*.
    3. The ILRA means the *Insolvency Law Reform Act 2016.*
    4. The IPR means the proposed *Insolvency Practice Rules (Corporations) 2016*.

    I note that the IPRs were made on 12th December 2016 and to the extent where these submissions relate to those parts of the CP276 that take force from the IPRs and therefore cannot be changed, I acknowledge this obstacle but make the observations in any event.

    I note that the Treasury website has not released submissions in relation to the IPRs so I am unable to say whether my comments have been raised by others and subsequently discounted in the drafting of the final form of the IPRs.

2. **Registration and Renewal of Registration**

    2.1 At table 4 on page 12 of the proposed CP276, ASIC reflects the requirements of the IPR.

    In my observation, this requirement entrenches the pathway to registration that has been in place for many years.

    I note that the senate inquiry at recommendation 13 provided as follows:

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

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> *…….is an Australian legal practitioner holding a current practising certificate with at least five years' post administration experience as a practising commercial lawyer; and/or*
>
> *……holds a Master of Business Administration with at least five years' commercial experience.*

In its introductory paragraph to that recommendation (paragraph 11.54) the committee observes:

> *"The committee believes that the best way to resolve the problem of overcharging and over servicing is to open the profession to more entrants. Presently, the requirements of registration as a liquidator are a course of study in accountancy of not less than three years and a course of study in commercial law of not less than two years. The committee believes the profession should also attract applicants with suitable experience from the legal profession as well as applicants with a Masters in Business Administration and relevant commercial experience. The committee emphasizes, however, the importance of a written examination to screen the wider range of applicants (see recommendations 8 and 9).*

I fail to see how registration can be obtained other than from within a firm presently taking appointments as external administrators.

The point here is that in my observation the IPs that have been subject to banning orders or enforceable undertakings over the last 4 or 5 years have all come from this traditional pathway which now seems more entrenched than less so.

I further note that S20-20 of Schedule 2 of the ILRA does not to my mind direct that applicants must come from such a narrow pool and to this extent the Rules and the proposed CP276 is inconsistent with the ILRA.

2.2 **Regional Areas**

I question whether these requirements will also provide difficulties for practitioners in regional areas.

It is unlikely that even in substantial regional areas in Australia there will be sufficient work for a practitioner to be fully engaged in insolvency practice. It is therefore

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unlikely that a person from a regional area will obtain 4000 hours experience in the immediate prior five years.

Further, in my observation it is unlikely that applicants who obtain that experience in the major cities will move to regional areas to provide that service. Their skill set would leave that person ill equipped for the diversity of practice in regional areas.

3. **Impact on career paths particularly for women**

I think registration requirements will place substantial difficulties for women trying to become and then maintaining their IP status, whilst trying to juggle family obligations.

As you will appreciate, many career paths for professional women involve substantial commitment to their work through their 20's and into their early 30's and an element of discontinuance occurs whilst they raise children, perhaps for a period of 3 – 5 years. During this time some work is undertaken but quite obviously not at the same intensity as prior to taking leave. Thereafter there is an ability to return to the workforce.

Today there are family arrangements where men do the child rearing but again inevitably there is a break in the career path.

In my observation both the registration requirements (4000 hours in the immediate prior 5 years) the number of new appointments (3) required in each year and the ongoing CPE obligations will be an impediment to women obtaining and then maintaining their registration.

Obviously, people's capacities and own circumstances vary significantly but it seems to me that the Rules and CP276 as they currently stand, present a difficulty to an individual who has stepped out of a full time career to assume family responsibilities. The requirement to then restart the whole process upon moving back into the full time work force at a practical level needs re-thinking.

4. **Diversity of Practice**

I am concerned that the Rules and the proposed CP276 do not support a practitioner in a more diversified practice. I believe this will impact adversely in the following respects:

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4.1 Independence

A diverse practice enables a practitioner to be more discerning in the work that he or she takes on as a practitioner has other forms of income to sustain his or her income and infrastructure.

I question whether the problems particularly for small practitioners who become involved (wittingly or unwittingly) in the pre-insolvency phoenix activity was that their practices were too specialised in insolvency services so that particularly where work in the last 10 - 15 years has been problematic due to the strong economy, those practitioners had become dependant on referral networks that perhaps they should not. A more diversified practise would have had an ameliorating effect.

4.2 Broader Knowledge Base Equals Better Results

In my observation, professionals can become too specialised in that they often see problems presented to them through the prism of their own speciality rather than having a capacity for a broader analysis of the problem and being able to suggest a resolution that is in the client's best interest. This can be particularly adverse where the regulatory framework pushes a practitioner to minimum number of appointments and practice hours.

5. **Career Changes**

The proposed CP 276 talks in terms of "temporary absence" as being a reason to cancel registration or not re-registering a practitioner. My observation is that a professional career typically lasts for some 30 – 40 years. I think it bad policy with adverse client outcomes for professionals not to move about within their careers over such a lengthy period of time.

Often professionals obtain a significant degree of expertise over a 5 – 10 year period and that experience will stay with them for the rest of their professional working lives. They may then move to a different field of practice in matters of degree.

Those different experiences build on their existing knowledge base and generally makes them far better at what they do.

By way of example, a family law practitioner may after a 5 – 10 year period become very experienced at family law. Indeed they may in fact be a family law specialist. He or she may

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take a break from that particular body of work and obtain expertise in say psychology centred on interpersonal relationships.

The practitioner then may undertake that body of work for a 5 year period. At this point they would be about half way through their professional career and may choose to re-embark again on practising family law.

It would be absurd in the extreme to say that that person was not qualified to undertake family law work. They may have to do a refresher of some sort but they should certainly not be required to undertake substantial amount of supervised work or training in order to re-qualify themselves.

Another example is that of a senior insolvency practitioner in a mid-size to large professional services firm who takes on the role of managing partner. Such roles are very demanding and leave little time for client work. Such appointments can last for years.

Is it suggested that after completing a 3 to 4 year stint as a managing partner that the practitioner would:

a) have lost registration, and

b) have to start the whole registration process again?

CP276 should allow for greater flexibility and a more common sense approach.

If you have any queries in relation to the above do not hesitate to contact me.

Regards,

RAY BARRETT
Director
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