

1 November 2017

Australian Securities & Investments Commission
By Email: policy.submissions@asic.gov.au

Dear Sir/Madam

Submission – Cost Recovery Implementation Statement (CRIS)

PPB Advisory appreciates the opportunity to provide feedback on the CRIS.

We refer to our previous submission on the ASIC Industry Funding Proposals Paper dated 28 October 2016. We are pleased ASIC has adopted our recommendation for a lower fixed levy however we continue to have concerns with the graduated levy which does not align with activity.

Number of appointments does not reflect activity

Proposal - The graduated levy should not apply to appointments on hand from an earlier financial year.

The graduated levy is to be charged on the number of ongoing external administrations at the beginning of the financial year and the number of external administration appointments the liquidator accepts during the financial year.

We are concerned that:

- the same graduated levy is applied to conduct an assetless court liquidation as it is for a large receivership matter where there are significant assets
- the graduated levy disproportionately affects liquidators who conduct a large number of small and assetless administrations and in circumstances where there a liquidation cannot be finalised for reasons outside of their control
- the timing of an appointment ie just prior to financial year end will result in distorted charges
- it is not clear whether joint appointees would each pay the graduated levy on appointments.

Assetless administrations

For completeness, we include a copy of submission dated 2 May 2014 on the cost of official liquidations which is now somewhat outdated. We note that since that submission, our write-offs have reduced significantly.

We make the following comments based on PPB Advisory statistics in addition with our experience in the court liquidation market:

- we have a dedicated team who work on court liquidations which has resulted in a specialised business unit in PPB Advisory with an advantage of scale and geography
- we apply strict processes, systems and controls to manage our court liquidations
- on average, a liquidation takes 1.5 years to finalise (this includes assetless and funded court liquidations)

- on average, an assetless court liquidation takes 277 days or approximately nine months to finalise (*analysis undertaken on appointments which were finalised in the 2016 year*)
- we envisage that it may take our competitors more time to finalise a liquidation if they do not have a dedicated team or a robust system in place to manage these type of appointments
- generally, an administration is often delayed due to direct and indirect litigation and/or recovery action (indirect being not under the liquidator's control) and waiting for the retirement of another external administrator ie Receiver.

Based on the above,

- where there are joint appointees, each would be charged the graduated levy (we have assumed that both appointees are charged the levy)
- by example, applying our statistics above, there would be six graduated levies totalling \$792 (based on \$132 per event) for an average joint appointed liquidation where the liquidators were appointed in March, or at least two graduated levies of \$264 for an unfunded sole appointed court liquidation where the appointment is made within nine months of the end of the financial year
- consequently, appointments may be delayed to the next financial year to avoid the second levy

Timing of levy does not reflect current activity

Proposal - Increase the Published Notices Website fee from \$5 to \$132 per notice allowing liquidators to pass through a substantial portion of the graduated levy.

The graduated levy is to be charged on the number of prescribed documents lodged with ASIC during the financial year and the number of prescribed notices published on the Published Notices Website during the financial year.

Prior to 1 July 2017, the cost of a notice on the Published Notices Website (**PNW**) ranged from \$70.00 to \$153.00. This cost was invoiced at the time of the notification and could be passed through to the company in administration and recovered where assets permitted. From 1 July 2017, the cost of a notice on the PNW was reduced to \$5.00.

We are advised that the estimated cost per notifiable event is \$110.00 but will likely increase to \$132.00.

ASIC can bring forward a substantial portion of the graduated levy by increasing the PNW fee to \$132 per notice, therefore reducing the need for liquidators to increase rates to recover this cost.

Practical considerations

- The inability to recover notifiable events from an administration will force liquidators to increase their rates to attempt to recoup some of these costs.
- There will be no incentive for liquidators to accept assetless appointments which result in an increase of "zombie" companies and potentially directors and officers not being held accountable for their actions eg phoenix activity and unlawful behaviour.
- As mentioned above, it is not clear whether each joint appointee will pay the graduated levy for each appointment and on each appointment where they are acting.

We further support the submission made by the Australian Restructuring, Insolvency & Turnaround Association (**ARITA**).

About PPB Advisory

PPB Advisory is a professional advisory firm employing more than 300 people with offices in across Australia (in Sydney, Melbourne, Brisbane and Perth) and Singapore. We specialise in corporate recovery and restructuring, management consulting and corporate advisory.

Our dedicated corporate restructuring team comprises of 17 partners and over 130 staff nationally of which 23 are registered liquidators.

PPB Advisory has a proud history of contributing to the development of legislation and policy in Australia and has made numerous public and private submissions to both federal, state and local governmental agencies and departments including the ASIC, and both the Department of Employment and the Department of Treasury, Commonwealth.

Yours faithfully



Scott Pascoe
Senior Advisor
PPB Advisory

Contact name:	Scott Pascoe
Telephone number:	+61 2 8116 3202
Email:	spascoe@ppbadvisory.com

Our Ref: ADMIN:SDP:GL

2 May 2014

Mr John Laird
Senior Specialist
Insolvency Practitioners
Australian Securities and Investments Commission

By Email: john.laird@asic.gov.au

Dear Sir

Cost of Official Liquidations

We estimate the total annual cost of administering all official liquidations in Australia is \$76.6 million. Of this sum liquidators recover remuneration of \$23.4 million and write off \$53.1 million of unrecoverable time.

In 1257 official liquidations administered by PPB Advisory which were completed between 1 January 2010 and 14 April 2014 PPB Advisory did not recover \$18.5 million of time cost representing 69% of all time spent on those matters. This reflects an average cost per appointment of \$21,270 and average recovery of \$6,500. See Tables 1 and 2.

We have classified the data for each year into categories by fee range and by length of time to complete the appointment. We received only 19% of total time cost in official liquidations in the \$0 to \$50,000 fee range. A commercially viable recovery rate is greater than 60%.

Whilst the recovery rate for liquidations with remuneration over \$50,000 is commercially viable, this represents less than 4% of all official liquidations and is recovered more than 2 years after appointment in the majority of cases.

Assetless Liquidations

We received no remuneration in 74% of all matters (assetless liquidations). The average cost of completing assetless liquidations was \$12,000.

By application of strict processes, controls, specialisation, with the advantage of scale and geographical concentration we were able to lower the average cost of assetless liquidations to \$9,200 in 2012. 55% of the liquidations were completed for less than \$7,500.

We have been unable to replicate this result across all offices, for all liquidators or in the absence of scale.

ASIC Statistics

We note that PPB Advisory's statistics are inconsistent with ASIC Report 372 Table 33, that only 25.5% of matters have estimated remuneration of zero. In our opinion the reasons for this difference are:

- Report 372 is based on appointees' estimates at the time of the EXAD report and may include disbursements. This submission is based on actual recovery of remuneration at the completion of the liquidation.
- Report 372 contains response about all types of appointment (including voluntary liquidations) and this submission relates to official liquidations only.
- Report 372 Table 24 notes 61.1% of all appointments have less than \$10,000 in assets which implies 25.5% in Table 33 is either substantially underestimated or the remuneration recovered was negligible.

I would be delighted to provide more detailed information, clarification or answer any questions at your convenience.

Yours faithfully

PPB Advisory



Scott Pascoe
Partner

Statistics Used in This Submission

All PPB Advisory official liquidation appointments commenced after 1 July 2008 and completed between 1 January 2010 and 14 April 2014. Job Name, appointee, appointment date, finalised date, fees collected (including receipts from Assetless Administration Fund), work in progress written off.

The full extracted data table is available with written permission of PPB Advisory.

PPB Advisory's Company and Personal Insolvency Group comprises 3 partners and 25 staff specialising in unsecured creditor recoveries. We have administered more than 3000 liquidations and bankruptcies since 2008 and are the market leader in this specialisation.

ASIC **Report 372** Insolvency statistics: External administrators' reports (July 2012 to June 2013)

Table 33: Liquidators fees \$0	25.5%
Table 24: Assets less than \$10,000	61.1%

Average number of Official Liquidation appointments per annum 3,600.

3 year average ASIC Insolvency statistics April 2014, Table 2.3 - Insolvency appointments – appointment type.

Total annual cost of administering official liquidations in Australia = Average number of official liquidations per annum x PPB Advisory average total cost of official liquidations 2010-2014 (Table 1).

Attachments

Table 1: All official liquidations by fee range

Table 2: All official liquidations by length of matter

Table 3: S Pascoe and G Granger appointments by fee range

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Table 1

Official liquidation by year finalised and fee range

Finalisation year	Fee range	Number of matters	Fees Collected	Written off	Average fees collected	Average write off	Percentage written off
2010	\$0	309	-	2,918,085.40	-	9,443.64	100%
	\$1 - \$50k	53	557,273.44	885,721.86	10,514.59	16,711.73	61%
2010 Total		362	557,273.44	3,803,807.26	1,539.43	10,507.75	87%
2011	\$0	226	-	2,509,483.19	-	11,054.99	100%
	\$1 - \$50k	63	920,210.31	1,405,791.81	14,606.51	22,314.16	60%
	\$51k - \$100k	3	190,084.58	39,276.21	63,361.53	13,092.07	17%
	\$101k - \$250k	1	140,384.90	1,471.67	140,384.90	1,471.67	1%
2011 Total		293	1,250,679.79	3,956,022.88	4,268.53	13,455.86	76%
2012	\$0	252	-	3,423,894.33	-	13,586.88	100%
	\$1 - \$50k	94	1,439,695.27	2,227,283.55	15,315.91	23,694.51	61%
	\$51k - \$100k	14	926,850.28	244,858.79	66,203.59	17,489.91	21%
	\$101k - \$250k	4	650,766.59	42,853.42	162,691.65	10,713.36	6%
	\$250k +	1	335,208.24	94,930.22	335,208.24	94,930.22	22%
2012 Total		365	3,352,520.38	6,033,820.31	9,184.99	16,531.01	64%
2013	\$0	124	-	1,994,025.40	-	16,080.85	100%
	\$1 - \$50k	57	1,034,486.36	1,573,433.11	18,148.88	27,604.09	60%
	\$51k - \$100k	12	847,506.07	265,629.06	70,625.51	22,135.76	24%
	\$101k - \$250k	2	340,327.92	14,799.49	170,163.96	7,399.75	4%
2013 Total		195	2,222,320.35	3,847,887.06	11,396.51	19,732.75	63%
2014	\$0	24	-	437,193.92	-	18,216.41	100%
	\$1 - \$50k	13	191,308.21	220,700.73	14,716.02	16,976.98	54%
	\$51k - \$100k	1	63,023.50	12,588.49	63,023.50	12,588.49	17%
	\$101k - \$250k	4	545,081.11	257,092.38	136,270.28	64,273.10	32%
2014 Total		42	799,412.82	927,575.52	19,033.64	22,085.13	54%
2010 to 2014	\$0	935	-	11,282,682.24	-	12,054.15	100%
	\$1 - \$50k	280	4,142,973.59	6,312,931.06	14,796.33	22,546.18	60%
	\$51k - \$100k	30	2,027,464.43	562,352.55	67,582.15	18,745.09	22%
	\$101k - \$250k	11	1,676,560.52	316,216.96	152,414.59	28,747.00	16%
	\$250k +	1	335,208.24	94,930.22	335,208.24	94,930.22	22%
Grand Total		1,257	8,182,206.78	18,569,113.03	6,509.31	14,760.82	69%

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Table 2

Official liquidation by year finalised and length of appointment

Finalisation year	Length of appointment	Number of matters	Fees collected	Written off	Average fees collected	Average write off	Percentage written off
2010	0-6Mths	102	62,812.94	632,841.12	615.81	6,204.32	91%
	7-12Mths	117	91,325.65	1,135,849.09	780.56	9,708.11	93%
	13-18 Mths	70	145,558.21	958,323.05	2,079.40	13,690.33	87%
	19-24Mths	54	107,463.96	738,986.74	1,990.07	13,684.94	87%
	+24Mths	19	150,112.68	337,807.26	7,900.67	17,779.33	69%
2010 Total		362	557,273.44	3,803,807.26	1,539.43	10,507.75	87%
2011	0-6Mths	116	32,194.29	803,229.41	277.54	6,924.39	96%
	7-12Mths	82	275,956.99	1,045,970.05	3,365.33	12,755.73	79%
	13-18 Mths	39	240,487.82	696,680.58	6,166.35	17,417.01	74%
	19-24Mths	24	306,842.87	552,082.72	12,785.12	23,003.45	64%
	+24Mths	32	395,197.82	858,060.12	12,349.93	26,814.38	68%
2011 Total		293	1,250,679.79	3,956,022.88	4,268.53	13,455.86	76%
2012	0-6Mths	163	52,644.45	1,362,747.27	322.97	8,360.41	96%
	7-12Mths	67	256,843.23	1,082,960.42	3,833.48	16,163.59	81%
	13-18 Mths	42	663,274.76	791,697.70	15,792.26	18,849.95	54%
	19-24Mths	31	479,757.03	800,833.87	15,476.03	25,833.35	63%
	+24Mths	62	1,900,000.91	1,995,581.05	30,645.18	32,186.79	51%
2012 Total		365	3,352,520.38	6,033,820.31	9,184.99	16,531.01	64%
2013	0-6Mths	93	56,311.00	1,040,715.64	605.49	11,190.49	95%
	7-12Mths	32	342,431.99	586,184.74	10,701.00	18,318.27	63%
	13-18 Mths	19	456,797.02	631,419.87	24,041.95	33,232.62	58%
	19-24Mths	13	215,394.28	303,450.83	16,568.79	23,342.37	58%
	+24Mths	38	1,151,386.06	1,286,115.98	30,299.63	33,845.16	53%
2013 Total		195	2,222,320.35	3,847,887.06	11,396.51	19,732.75	63%
2014	0-6Mths	8	-	92,383.23	-	11,547.90	100%
	7-12Mths	9	10,512.75	122,773.68	1,168.08	13,641.52	92%
	13-18 Mths	9	71,955.80	172,990.62	7,995.09	19,221.18	71%
	19-24Mths	7	223,791.72	120,952.07	31,970.25	17,278.87	35%
	+24Mths	9	493,152.55	418,475.92	54,794.73	46,497.32	46%
2014 Total		42	799,412.82	927,575.52	19,033.64	22,085.13	54%
2010 to 2014	0-6Mths	482	203962.68	3,931,916.67	423.16	8,157.50	95%
	7-12Mths	307	977070.61	3,973,737.98	3,182.64	12,943.77	80%
	13-18 Mths	179	1578073.61	3,251,111.82	8,816.05	18,061.73	67%
	19-24Mths	129	1333249.86	2,516,306.23	10,335.27	19,506.25	65%
	+24Mths	160	4089850.02	4,896,040.33	25,561.56	30,600.25	54%
Grand Total		1,257	8,182,206.78	18,569,113.03	6,509.31	14,760.82	69%

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Table 3

S Pascoe and G Granger official liquidation by year finalised and fee range

Finalisation year	Fee range	Number of matters	Sum of Fees Collected	Sum of Write Off	Average of Fees Collected	Average of Write Off	Percentage written off
2010	\$0	166	-	1,521,952.13	-	9,168.39	100%
	\$1 - \$50k	29	298,981.99	402,990.93	10,309.72	13,896.24	57%
2010 Total		195	298,981.99	1,924,943.06	1,533.24	9,871.50	87%
2011	\$0	106	-	1,119,504.72	-	10,462.66	100%
	\$1 - \$50k	28	444,443.29	678,966.32	15,872.97	24,248.80	60%
	\$51k - \$100k	2	137,601.94	945.10	68,800.97	472.55	1%
	\$101k - \$250k	1	140,384.90	1,471.67	140,384.90	1,471.67	1%
2011 Total		137	722,430.13	1,800,887.81	5,273.21	13,049.91	71%
2012	\$0	132	-	1,219,809.06	-	9,240.98	100%
	\$1 - \$50k	52	802,049.67	1,066,741.23	15,424.03	20,514.25	57%
	\$51k - \$100k	7	468,314.49	117,806.79	66,902.07	16,829.54	20%
2012 Total		191	1,270,364.16	2,404,357.08	6,651.12	12,588.26	65%
2013	\$0	59	-	733,955.56	-	12,439.92	100%
	\$1 - \$50k	29	445,244.00	725,547.19	15,353.24	25,018.87	62%
	\$51k - \$100k	4	271,686.37	35,632.48	67,921.59	8,908.12	12%
	\$101k - \$250k	1	204,164.42	12,500.73	204,164.42	12,500.73	6%
2013 Total		93	921,094.79	1,507,635.96	9,904.25	16,211.14	62%
2014	\$0	6	-	66,359.62	-	11,059.94	100%
	\$1 - \$50k	7	86,897.08	110,119.73	12,413.87	15,731.39	56%
2014 Total		13	86,897.08	176,479.35	6,684.39	13,575.33	67%
2010 to 2014	\$0	469	-	4,661,581.09	-	9,918.26	100%
	\$1 - \$50k	145	2,077,616.03	2,984,365.40	14,328.39	20,581.83	59%
	\$51k - \$100k	13	877,602.80	154,384.37	67,507.91	11,875.72	15%
	\$101k - \$250k	2	344,549.32	13,972.40	172,274.66	6,986.20	4%
Grand Total		629	3,299,768.15	7,814,303.26	5,246.05	12,403.66	70%