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Australian Securities and Investments Commission

By Email Only: policy.submissions@asic.gov.au

Dear Sir/Madam

**RE: ASIC Supervisory Recovery Levy
Cost Recovery Implementation Statement**

We refer to the Cost Recovery Implementation Statement (CRIS) released by the Australian Securities and Investments Commission (ASIC) on 8 October 2017. We advise that we have the following specific concerns:

- The anticipated charge of \$132.00 per notifiable event is a cost that will, in the majority of liquidations, be borne by the liquidator or their firm. This is because the bulk of liquidations are without funds or the realisations are not sufficient to pay the liquidator's remuneration,
- Liquidators in unfunded court liquidations already personally pay various disbursements such as legal fees, search fees, postage and photocopying. The proposed levy will be a further costs many liquidators will have to pay personally, and
- The total costs per liquidation, as estimated by the Australian Restructuring Insolvency and Turnaround Association is \$14,550.00.

I am not aware of any other profession that takes on as much unfunded work as insolvency practitioners.

Liquidators' unfunded work is a service to creditors and ASIC.

We believe the notifiable event levy should not be imposed on unfunded liquidations and the CRIS model adjusted so the levy is not borne by liquidators personally if there are insufficient realisations to pay the petitioning creditor's costs, disbursements and reasonable remuneration.

Further, we believe liquidators should be provided at the end of each financial year with an estimate of the notifiable event levy that can be paid from liquidations rather than having to wait six (6) months or more after the end of the financial year to receive an invoice for the previous financial year.

If there are funds in a liquidation then a delay in issuing the invoice for the levy could in some instances delay the finalisation of liquidations.

Most companies are in liquidation due to the actions of the directors.

The party that stands to benefit most from a liquidation is the creditors.

Therefore we believe the whole funding model with respect to insolvency needs to be changed so that directors and creditors bear the costs.

The funding model in bankruptcy has worked well for decades. Surely it could be applied to liquidations and we believe ASIC should consider implementing a similar model.


KL SUTHERLAND

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