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RG 258 Consultation Feedback
Companies and Small Business
Australian Securities & Investments Commission
By Its Proper Officer

By email: DL-C&SB-RG258.Feedback@asic.gov.au

26 April 2024

Dear Sir/Madam/To Whom It May Concern,

Consultation Paper 376: Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance – Updates to RG 258 and supporting documents and templates ('CP 376')

1. Introduction

Thank you for the opportunity to make a submission to CP 376. ASIC are to be commended for commissioning this consultation and proposal to update RG 258. The views expressed in this submission are my own and should not be attributed to UTS or UTS Law.

I am a **Senior Lecturer**, Faculty of Law at the University of Technology Sydney. I completed my PhD in 2023 at the University of Adelaide where I was awarded the University Research Doctoral Medal. My research question addressed the following:

What is the extent to which the *Insolvency Law Reform Act 2016 (Cth)* ('ILRA') has been effective in achieving its legal and policy objectives in the regulation of insolvency practitioners in its first five years of operation?

Since 2019-current, I have been the Chief Investigator, and co-investigator, of **three** commercial-in-confidence **funded projects on the insolvency regime and the regulation of insolvency practitioners**. I have **authored** the following publications relevant to CP 376:

- **Catherine Robinson**, 'CALDB to Part 2 Committee – A Review of Disciplinary Matters from 2017 to 2021' (2022) 37 *Australian Journal of Corporate Law* 184

- **Catherine Robinson**, ‘Regulation of Insolvency Practitioners in a Pandemic’ (2020) 28 *Insolvency Law Journal* 181
- **Catherine Robinson**, ‘An Early Response to Regulatory Changes under the Insolvency Law Reform Act 2016 (Cth): A Survey of Registered Liquidators and Registered Trustees’ (2019) 27 *Insolvency Law Journal* 211
- **Catherine Robinson** ‘A New Era in Insolvency Practitioner Discipline’ (2018) 6&7 *Insolvency Law Bulletin* 123
- **Catherine Robinson**, ‘Research and Reform: The Long Road to the Insolvency Law Reform Act 2016 (Cth)’ submitted to the Corporate Law Teachers Association Annual Conference 11-13 February 2018

My submission addresses Parts B: Structural Changes and E: Disciplinary and other actions:

2. **Part B: Structural Changes**

B2 Q1: Is the restructure of the guide with separate Sections E (ongoing obligations) and F (disciplinary and voluntary actions) useful and easier to navigate? If not, please provide reasons.

Yes, I agree that the restructure of the guide into Sections E (ongoing obligations) and F (disciplinary and voluntary actions) is useful and easier to navigate.

B2 Q2: Is guidance needed on any other topic across these two sections? If so, what other details are needed.

I suggest consideration be given to the following amendments to:

- **RG 258.200** – at the commencement of the paragraph, it would be helpful for ASIC to outline its overarching regulatory approach to assessing compliance and the selection of the conduct matters ASIC pursues, for example, a risk-based approach, or a harms-based approach.
- **RG 258.216** – the grounds (a)-(n) on which ASIC may issue a show-cause notice are numerous and broad (particularly the wording of (f) ‘have contravened a provision of the Corporations Act’. It would be helpful for ASIC to issue some guidance on how this provision has been interpreted and applied, in a similar manner to the detailed guidance provided in Table 8.

I note that in ASIC’s, *Response to submissions on CP 276 Registered Liquidators* (Report 51, March 2017) at page 13, stakeholders requested that ASIC issue further guidance on the grounds upon which they could issue a show-cause notice.

- **RG 258.238** – at the conclusion of the paragraph, suggest ASIC provide guidance on whether questions may be asked of the practitioner outside of the interview to clarify matters raised in the interview, or as part of the conduct matter generally.

- **RG 258.243** – Consideration should be given to revising RG 258.243 at a minimum to publishing the reasons for non-publication of a committee’s decision. While ASIC must be directed by the committees to publish, ASIC also chairs the same committees. This accords with the strong public interest in the disciplinary committees, including the livelihood of the practitioner and any affected third parties, and the highly educative value of the committees to the profession and insolvency stakeholders. The case of Cameron Lindsay Duncan¹ highlights the negative impact non-publication without reasons can have upon ASIC, the individual disciplinary committee, and the integrity of the regulatory framework.² In this case, the limited reporting of serious disciplinary action without context led to undue public speculation, including that the practitioner had been treated unfairly by ASIC and the Committee.³

3. **Part E: Structural Changes**

E1 Q1: Is our additional guidance on maintaining the currency of knowledge at RG 258.216-RG 258.218 clear and comprehensive? If not, provide reasons.

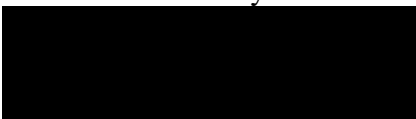
It would be helpful for ASIC to provide practical guidance for practitioners in relation to circumstances where they have been unable to demonstrate knowledge, skills, and experience within the *three consecutive years* requirement as stipulated in ‘Corporate insolvency appointments.’

E3 Q1: Is the guidance on a voluntary cancellation or suspension of registration at RG 258.281-RG 258.288 clear and comprehensive? If not, what additional details would be helpful?

ASIC might consider inserting a paragraph outlining the right of review or appeal (if any) in the event practitioners are dissatisfied with ASIC’s decision.

I welcome the opportunity to discuss any of the above matters in further detail.

Yours faithfully



¹ Australian Securities and Investments Commission, ‘23-065MR Liquidator disciplinary committee cancels registration of Cameron Duncan’ (Media Release, 15 March 2023).

² See, e.g., Michael Murray, ‘Liquidator Discipline Outcome- Reasons Unknown’ (Murrays Legal Blog, 17 March 2023)

https://murrayslegal.com.au/blog/2023/03/17/liquidator-discipline-outcome-reasons-unknown/?utm_source=rss&utm_medium=rss&utm_campaign=liquidator-discipline-outcome-reasons-unknown; and Peter Gosnell, ‘KordaMentha Partner Stripped of Registration’ (Insolvency News Online, 17 March 2023) <<https://insolvencynewsonline.com.au/kordamentha-partner-stripped-of-registration/>>.

³ Michael Murray, ‘Liquidator Discipline Outcome- Reasons Unknown’ (Murrays Legal Blog, 17 March 2023) https://murrayslegal.com.au/blog/2023/03/17/liquidator-discipline-outcome-reasons-unknown/?utm_source=rss&utm_medium=rss&utm_campaign=liquidator-discipline-outcome-reasons-unknown.