

Dear ,

passed on the Proposals Paper to me for comment and kindly agreed for me to contact you directly with my comments which are relevant to financial counsellors and are set out below. In particular, I am somewhat passionate about the issue of insolvent companies with debts which are too small to be worthy of liquidation. The process of getting these companies deregistered is not well publicised, leading to a lot of confusion among failed businesspeople, who have enough unhappiness already. Many of these businesspeople end up bankrupt, but they still have to go through a lot of bureaucracy to tidy up the mess. I would dearly like to see a simple and free process for killing off the many defunct companies that have debts and no assets.

Most of the proposals relate to the accreditation and regulation of insolvency practitioners. I don't think this is of any significance to financial counsellors, but are generally aimed at improving the standards and efficiency of insolvency practitioners, which is a good thing.

One of the proposals is for a single accreditation to allow every registered insolvency practitioner to be a liquidator, administrator, receiver and bankruptcy trustee. Makes good sense and surprising they never did it years ago.

### **Minimum fees**

Paragraphs 61-63 propose a standard minimum fee of \$5,500 for liquidators and registered trustees. However, there is no mention of the fact that bankruptcy trustees are no longer able to demand this payment from the bankrupt if there is insufficient divisible property in the estate to cover it. Might be worth a reminder?

### **Disbursements**

Paragraphs 68-72 propose tighter controls on insolvency practitioners profiting from the sale of property and other transactions. This is a useful proposal for bankrupt estates where there would be a surplus, except that the trustee rips off much of the property that would otherwise be returned to the bankrupt on the annulment.

### **Reviews of trustee remuneration in personal bankruptcy**

Paragraphs 80-83 propose the empowering of ITSA to initiate its own reviews of trustee's remuneration where it suspects that the trustee is overcharging. At the moment ITSA can only conduct a review when asked by a creditor or the bankrupt. Bearing in mind that most creditors don't give a stuff and quite a lot of bankrupts have mental health issues, this is a very welcome proposal and should be strongly supported.

### **Small business**

Chapter 11 proposes the establishment of a "one-stop-shop" for related bankruptcy and company insolvency administration. Clearly a good idea that should be supported. Much of the focus is on "phoenix activity" where companies become insolvent and the assets disappear. Financial counsellors do not support such activities and are more likely to be looking after the interests of the employees who lose their entitlements after a phoenix company closes down.

### **Statements of affairs**

Paragraphs 227-236 propose increasing the penalty for failure to lodge a statement of affairs to \$5500 from \$2750. I don't think this will be of any relevance to financial counselling clients and is aimed at people who are doing tricky things with their property and don't want to tell their trustee.

## **Deregistration of insolvent companies**

A glaring omission from the proposals paper is any consideration of companies that are insolvent, have no assets, but have outstanding liabilities. An individual in this situation can file a debtor's petition. But there is no parallel procedure under the Corporations Act. Instead the law provides for an expensive procedure of voluntary liquidation or restricts immediate deregistration to insolvent companies with no outstanding liabilities. The current situation involves a cumbersome process of deregistration by ASIC which can take a couple of years to finalise. The process is not publicised by ASIC and the result is that many people whose small business fails suffer a lot of stress and confusion not knowing how to end the existence of their failed company.

Please give me a call on (02) 9263 5586 if you would like to discuss this further.

Regards,

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