

Submission to The Senate Inquiry

Foreword:

The Inquiry should be aware that the rogue elements in the Insolvency Practitioners (IP) Industry do not only destroy assets, financial value and jobs. They can and do, also destroy the health, relationships and in some instances, the lives of their victims.

From my experience I believe this Industry operates in a near total policy and regulatory vacuum..

I firmly believe that the individual victims of Stuart Ariff would each, have been overwhelmed by him had they not banded together.

When they did communicate, they saw patterns emerge. They saw the use and re-use of the same associates of Mr Ariff in various capacities.

They saw repetitive abuses of power.

They saw repeated “minor clerical errors”.

But always the same result emerged:

Creditor’s value destroyed & Mr Ariff enriched.

Mr Ariff’s victims complained repeatedly to the Industry associations and the ASIC with no action being taken. It was only when the victims took their findings to the press that any action was commenced. I personally complained to IPA, CPA & ICA more than 50 times and to the ASIC 3 times to no avail.

The press eventually embarrassed ASIC to act.

Mr Ariff’s case presents a unique opportunity to look at what can and does go wrong.

His case, unfortunately, is not unique.

The Role of the Industry Associations: (IPAA, ICA & CPA.)

These are voluntary associations.

They have no real regulatory power nor should they ever be entrusted with such power. Despite, hundreds of complaints from very many different complainants no meaningful investigation was ever undertaken of Mr Ariff by any of them.

The ICAA decided to fine Mr Ariff \$20,000 & “discipline” him after he had been found to have, sworn multiple false affidavits in the Wambo case (NSWSC829). Justice White said: “He wilfully and recklessly failed to make enquiries for fear of learning that which he did not wish to know.”

(A rogue Administrator can do a great deal of damage by intentionally omitting to investigate matters, which, if investigated, would reveal information that does not serve his purpose.)

It beggars belief that one “professional” body let alone, all three, could retain Mr Ariff in their ranks after such a damning indictment.

I note IPAA still question the need for this Inquiry. The suggestion has been made by IPAA that, complaints to ASIC regarding IP’s represent “only 2% of total complaints to ASIC”. This is a very “creative” use of statistics considering that there are ~576 Liquidators in the Country and ASIC oversees over a million corporations?

The Fees & Disbursements of IP's & Staff (vs Their Skills, Knowledge, Attributes and Experience).

It is common practice for IP's to have charge-out rates of between \$450 & \$500 p/h for themselves and between \$350 & \$400 p/h for their "managers". Some firms charge considerably more than this.

In addition to this, disbursements are also charged.

One could reasonably expect that such hourly rates reflect an overhead component. In the normal scheme of things, items such as photocopying, printing, internal meeting room hire etc would be covered within the hourly rate. This is not the case with IP's who charge these items additionally.

These are extraordinary rates and totally out of proportion to the relatively modest requirements necessary to qualify as an IP. These are basically: a financial degree, a relatively short specialist IP course, experience gained working under accredited IP's and two references from IP's.

Mr Ariff also had the dubious distinction of being able to appear in two places at once & charge his hourly rate twice at least for the same hours?

There appears to be no requisite qualifications for their "managers". Stuart Ariff employed a variety of "managers". One was charged out at up to \$700 p/h. This "manager" holds a basic financial administration degree. This "manager" was the subject of an investigation regarding Insider trading some years ago. Another of Mr Ariff's "managers" was classified as such even before completing the basic Commerce degree now completed. Stuart Ariff worked for Star, Dean-Wilcocks, Crosbie before establishing SAIA. He was approved as an RL

within weeks of Mr Star being disciplined by CALDB and banned for a period.

Stuart Ariff was appointed an OL within weeks of Mr Dean-Wilcocks being similarly disciplined.

Questions raised by these appointments relate to the quality of the experience Mr Ariff gained prior to his appointments and the credibility of his referees.

There is also an issue with the monitoring of those aspiring IP's trained by Mr Ariff who are now spread throughout the IP Industry. I fear that the experience gained under Mr Ariff's instruction and supervision could qualify as acceptable Industry experience?

Other officers of Mr Ariff's staff included:

An "Industry Expert" in the administration of my Company and yet was totally ignorant of the Industry. Strangely, Mr Ariff also employed this same individual, in another Administration, there as another "manager".

An "Independent Valuer and Auctioneer" was also employed by Mr Ariff, during his administration of my Company. Strangely, this "Independent Valuer & Auctioneer" only ever conducted Auctions on behalf of Stuart Ariff. Even more strangely, this business was initiated from Mr Ariff's business address.

Yet another individual was employed as a "manager" at my Company. He also carried out many other "managerial" roles for Stuart Ariff including: bearing a false proxy in support of Mr Ariff at a second unrelated administration.

Strong-arm man at a third unrelated administration.

Accountant at a fourth unrelated administration.

Consultant at a fifth unrelated administration.

This individual now sits on the creditors committee in a very high profile unrelated liquidation as a proxy for parties other than Stuart Ariff.

IP's and staff appear inadequately vetted or trained. Considering this situation, their "professional status" & remuneration appears to be farcical.

The Role Of ASIC

The problems with the ASIC in terms of their role as a credible regulator are very serious.

As stated previously, they are responsible for overseeing in excess of a million corporations.

Many of those corporations are small businesses, in fact, in excess of 85% of them are so classified.

It is of concern when the peak (and only) regulator expresses to a complainant that they are not funded to deal with difficulties of value less than \$10 million.

Small businesses are defined by this turnover or less.

That however was the ASIC response to complaints about Mr Ariff from the Juice Station Franchisees.

This position, stated by the ASIC to that complainant confirms that there is no Industry regulator or any protection for 85% of Australian Businesses. This, is also the experience of the victims of Stuart Ariff.

How many complaints were received and ignored or "added to their database" is unknown but there must at least have been scores. I personally made 3 e-complaints to ASIC each securing the: we will "add it to our data base" response.

Some months after ASIC had launched it's case against Mr Ariff in the Supreme Court I thought I would test that e-complaint system again and made a fourth complaint. I received exactly the same we will "add it to our data base" response. This is not satisfactory from the peak (and only) regulator in this area.

In the matter of Ariff, the ASIC failed many tests:

How can so many pleas for help and complaints to the peak (and only) regulator be ignored?

How is it possible that Ariff is allowed to operate for a year without PI Insurance?

(Insurance was cancelled, within weeks of ASIC mounting their Supreme Court Case against him. The arrangements for progressive payment of premiums, apparently condoned by ASIC, are to say the least, farcical)

How is it possible that Ariff is permitted to store Client documents in a facility, which is free to destroy them if he is errant in payment of storage fees? This was done 3 days after ASIC's successful case against Ariff. (Yet again, clearly farcical)

How is it possible that ASIC commence a case of this type in August 2008 and then allows another year to drag by without any control over Mr Ariff's disposal of assets, allow him to operate without insurance and with document security at risk? (Yet again, farcical)

How is it possible that after all the investigations that the ASIC accepts Mr Ariff's civil admissions and then fails to pursue Criminal charges?

Mr Ariff admitted to all of ASIC's 83 allegations.

He agreed to be banned for life.

He agreed to pay nearly \$5 million in part compensation to some of his victims.

The actual end result was that his IP business had already been destroyed by his reputation.

And so, a life ban was meaningless.

His Commitment to pay nearly \$5 million in compensation was also meaningless.

He allowed Bankruptcy proceedings to ensure that.

The ASIC now appears not interested in pursuing his money trail.

ASIC investigated 16 of Mr Ariff's administrations.

They found malfeasance in every one, from largest to smallest and from first to last.

The true sum of Mr Ariff's misappropriations over 300 Administrations may never be known.

ASIC do not enjoy a file-sharing agreement with other Govt Departments. During the ASIC Investigation of Mr Ariff I found myself being asked very similar questions by the ATO who were also investigating his practices. These Departments and, I presume, others could exchange information against very specific questions but not share total intelligence. ASIC must rectify that situation.

It was the 17th August 2005 when Joel Fitzgibbon stood in Federal Parliament and drew ASIC's attention to the "rogue administrator" Stuart Ariff. Mr Ariff must be laughing at the ineptitude of our regulatory system. He has admitted a small part of his wrongdoings, squirreled away his booty and walked. His victims are not so fortunate.

The Practices of Insolvency Practitioners (IP's).

In theory, the Voluntary Administration (VA) process is intended to provide respite and safe harbour for cash threatened Companies to enable them to re-organise and regenerate.

In practice, it operates to the reverse of this intention. This appears to be because of the quite separate motivations of the IP's.

They are there to make money, and as much as possible, pure and simple.

The costs associated with their appointment and presence is quite often more than enough to finish off many small businesses. It is not uncommon for them to run up \$50-\$60k bills inside a fortnight.

And so they look at recouping their own fees. The easiest way to do that is often to simply sell up the Company's assets. The IP's fees and disbursements are paid first from any asset realisation.

So, there really is very little financial motivation for the IP to take any real steps to salvage or assist in the salvage of a troubled Company.

The effect of this situation is to deter many small businesses from approaching them at all and risk trading whilst insolvent or else to reduce substantially the available return to Creditors of an orderly asset realisation (purely because of the IP's fees). The IP's must be given a motivation to take constructive steps rather than the present motivation, which is clearly destructive.

The IP in a VA situation immediately assumes all power. To remove a "rogue" requires an expensive court process. Their victims are normally already financially challenged and so that is not an option. As I have pointed out, ASIC simply does not want to know and the Industry organizations are self-serving. And so the IP's find themselves in a position of unchallengeable power. This allows them to abuse that power at every stage of the VA process.

There are forms to fill in and file with ASIC and a process to be notionally followed but there is no check on the conduct of the process and no check on the validity of the forms because there is no regulator.

IP's are obliged to notify Creditors of any meeting. In the case of Mr Ariff he carefully selected the Creditors he wished to inform and did not inform the remainder- "a minor clerical error" There is nothing to stop any other IP doing the same.

IP's are obliged to validate Creditor claims. In the case of Mr Ariff he routinely would allow false Creditors (but always those prepared to vote along

his lines, even with false proxies procured by him) to participate in Creditors meetings.

Genuine Creditors who were not pre-disposed to vote along Mr Ariff's lines on the other hand were threatened with his arbitrary power to dismiss their claims and their voting power.

There is nothing to stop any other IP doing the same.

IP's control not only the distribution list of any notices of meetings, agendas & minutes but also the content. In the case of Mr Ariff the content was usually not reflective of any reality but rather his method of mis-informing ASIC & creditors alike.

There is nothing to stop any other IP doing the same.

IP's select their Industry Experts, Consultants, Auctioneers & Valuers etc. without any external regulation regarding required qualifications.

In the case of Mr Ariff, he selected an Industry Expert with no knowledge of the Industry.

He selected underqualified "managers".

He selected the "Independent Auctioneer & Valuer".

There is nothing to stop any other IP doing the same.

IP's having total control of a Company's assets can launch spurious Litigation in the name of the Company they have seized total control of without reference to Creditors.

Mr Ariff does this to hopefully silence disgruntled Creditors. It costs him nothing because the Company is the litigant. Essentially you end up fighting against your own money.

There is nothing to stop any other IP doing the same.

There is corruption in this Industry.

The Industry Associations may bleat, but hopefully no-one will listen to them this time around.

They have had more than enough opportunities to sort themselves out and have not attempted to do so. The ASIC may protest and if one thing only could be said in their favour it is that when they put their troops on the ground they are good. Unfortunately their support is missing in action and their Management does not exist.

The IPAA appear to live in a parallel universe.

I personally believe that the IP role could never be successfully filled by commercial enterprise.

This, to my mind, is not about burying the dead at maximum expense and profit for IP's. It is about people, enterprise and progress. It is about securing jobs and encouraging business.

I think that might have been what the designers of the VA system were on about before they were countered by the IP "professionals"?

I have much more to say, in front of the Inquiry.

