

Sent: Thursday, 3 December 2009 11:51 AM

Subject: Submission to the senate inquiry into receivers and administrators

Thankyou for the opportunity.

My submission is not so much focused on the cost of these organizations but more so as to how and why they are required in the first instance and why that it appears to be a growth industry.

Receivers and administrators are necessary as a result of companies running out of support from financiers and the company then being declared insolvent.

The costs involved are horrendous and seem hardly justified however they are being asked to sort out some incredible messes that arise as a result of ASICs inability to maintain control over board room shenanigans.

My submission is therefore on behalf of suppliers to projects who are hardest hit in the most un Australian and unfair way when project owners, project managers and their financiers opt to cut and run leaving a trail of unsecured creditors in their wake.

Suppliers to industry have few options when tendering and performing "works under the contracts" (WUC) under AS4000

Not tendering and not doing anything is obviously out of the question.

Take out their own insurance (debtor insurance) at rates that are up there with the insolvency practitioners themselves .

The on charging of the cost of this insurance makes for an increase in the tender price which is undercut by others willing to take the risk in order to get the work.

The cost of this insurance is going through the roof and becoming even more out of reach as the risk to the insurers book escalates as insolvencies are becoming more and more common.

There is no way that suppliers can be "secured " and hence in the case of insolvencies be a "secured creditor" with some rights and hope.

They have no choice but to be "unsecured creditors".

In all of the ASIC website there is not one mention of ASICs role in protecting suppliers to industry and their employees.

Most contracts in Australia are written under the terms and conditions of AS 4000

AS4000 contains comprehensive documentation regarding the responsibilities of contractors to insure every aspect of the contract with absolutely no reference to the principle insuring their payment to the contractor or subcontractor (see AS 4000 section 19 Page 17)

ASICs charter should be to ensure protection for all stakeholders and this could be achieved by writing into AS 4000 that there should be reciprocal insurance rights for all stakeholders.

If premiums were gathered by the insurance industry on every contract then the overall premium would be drastically reduced as is the case with most forms of insurance premium collection.

A recent case in Western Australia highlights an all to common occurrence.

A mining company was nearing the completion of a project
They had several refinancings due to cost blowouts and project management under budgeting
The financiers got very nervous and withdrew support
The company ran out of cash
The company was placed in administration
Secured creditors had done their sums and had shut the project down when they felt they could still recover their investment
Unsecured creditors wore the balance (\$60,000,000) without any warnings of course(In our town alone over \$10,000,000 dollars was left owing to 14 family owned companies causing an incredible amount of angst.

Some of those companies are on the brink of insolvency themselves and full credit to our banking industry who have so far stuck with us.

It is not acceptable that suppliers to this project should suffer these losses.

Why does ASIC have no role in protecting suppliers.

Statutory reciprocal insurance requirements under AS 4000 should become a cost to a project and lessen the role of insolvency companies.

I applaud the ministers initiative but would encourage him to go back a few steps to the root cause of the requirements for insolvency practitioners in the first instance.

Regards,

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