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Chartered Accountants
Insolvency and Reconstruction

9 June 2015

Senate Economics References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Attention: Dr Kathleen Dermody

By email: economics.sen@aph.gov.au

Dear Dr Dermody

RE: INQUIRY INTO THE SCRUTINY OF FINANCIAL ADVICE

I refer to your letter dated 26 May 2015.

I thank the Senate Economics References Committee (**Committee**) for affording me the opportunity to respond to the submission of the Holt Norman Ashman Baker Action Group (**HNAB-AG Submission**) to the Committee insofar as it contains evidence that may reflect adversely on me.

I now make the following comments in response to the HNAB-AG Submission.

I have confined my comments to those matters that I consider may directly or indirectly reflect adversely on me. I have no objection to my response being made a public document.

The majority of the paragraphs of the HNAB-AG Submission are not numbered or otherwise specifically identified. Accordingly, to assist the Committee in understanding my comments, I have referred to the relevant page of the HNAB-AG Submission and set out the assertion to which I am responding, or the substance of it, before commenting on it.

- A. Page 3 of the HNAB-AG Submission – That Peter Holt used strategies to protect his assets.
1. It is commonplace for professional persons such as accountants, legal practitioners and medical practitioners to arrange their affairs so as to protect themselves from creditors. Ordinarily they will do this in order to shield themselves from the risk of an adverse judgment for professional negligence that, for whatever reason, may not be paid or wholly paid by their professional indemnity insurer.
 2. This risk is heightened when the person carries on business in partnership due to partners generally being liable for the acts or omissions of other partners in the partnership. In this regard, Mr Holt asserts that he carried on business in partnership prior to his bankruptcy.

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3. In the present case, an example of the use of an asset protection strategy is provided by the house in Balwyn in which Mr Holt resides. This property was purchased in 1998 from an arm's length third party by a company of which Mr Holt and his wife then were the directors. This company held the property on trust. In 2002, ownership of the property was transferred by the company to Mrs Holt who continues to own this property.
4. Thus, although Mr Holt has resided in the property for the past sixteen years, he has never had any legal or beneficial interest in it. Consequently, when he went bankrupt, neither this property nor any interest in it vested in me as his trustee in bankruptcy.
5. The Bankruptcy Act 1966 (**Act**) gives a trustee in bankruptcy certain powers to claw back transfers of property or payments of money made by persons who later become bankrupt. However, these powers only operate in certain circumstances and within specified timeframes.
6. Consequently, although it may upset some of his creditors, depending upon how a bankrupt's affairs are arranged prior to him going bankrupt, he may be able to quite legally enjoy a comfortable lifestyle whilst bankrupt.
7. Moreover, even where resort can be had to the claw back provisions of the Act, the exercise of them will normally require the trustee to embark on litigation. Doing so requires that the trustee have funds available to him to prosecute the proceedings.
8. In the course of my investigations into the affairs Mr Holt, I identified a number of transactions where I potentially could have used the claw back provisions of the Act to recover additional funds into his estate.
9. I had only limited funds available to me in the administration of Mr Holt and, despite two written requests by me to them, none of the creditors of his estate were prepared to fund me even to conduct a public examination of Mr Holt regarding his conduct and affairs.
- B. Page 3 of the HNAB-AG Submission – That Peter Holt had voluntarily made himself bankrupt prior to 2011.
10. To my knowledge, Peter Holt became bankrupt for the first time on 10 June 2011 and had not previously been subject to any form of administration under the Act.
11. In this regard, Part 13 of the Bankruptcy Regulations 1996 (**Regulations**) makes provision for the establishment and maintenance of the National Personal Insolvency Index (**NPII**).
12. Regulation 13.03(1)(a) requires that, to the extent relevant, all of the information specified in Schedule 8 of the Regulations is to be entered in the NPII in respect of each creditor's petition, bankruptcy, debt agreement under Part IX of the Act, personal insolvency agreement, administration under Part XI of the Act or order under section 253E of the Act, occurring or made on or after 16 December 1996.

13. In addition, Regulation 13.03(1)(b) requires that the information on the BIOS in respect of bankruptcies (including completed bankruptcies) also must be entered on the NPII. BIOS (Bankruptcy Index Online System) was the electronic bankruptcy database maintained before 16 December 1996 by Registrars in Bankruptcy.
14. For the benefit of the Committee, I attach an NPII search for Peter Holt made by me on 3 June 2015. The only administration under the Act of Mr Holt disclosed on the search is his present bankruptcy.
15. The contention in the HNAB-AG Submission that Peter Holt had voluntarily made himself bankrupt prior to 2011 would appear to be incorrect.
- C. Page 3 of the HNAB-AG Submission – That Peter Holt used bankruptcy to protect himself from litigation and financial loss.
16. This contention reflects a fundamental misunderstanding on the part of the authors of the HNAB-AG Submission of the nature and effect of bankruptcy and of the operation of the Act.
17. By its very nature, bankruptcy is protective of the affairs of a debtor. Subsection 58(3) of the Act is in the following terms:

Except as provided by this Act, after a debtor has become a bankrupt, it is not competent for a creditor:

 - (a) to enforce any remedy against the person or the property of the bankrupt in respect of a provable debt; or
 - (b) except with the leave of the Court and on such terms as the Court thinks fit, to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.
18. The most common circumstance in which leave under paragraph 58(3)(b) is granted is to enable a creditor to pursue a claim where and to the extent that the bankrupt is insured. In other situations, a grant of leave almost invariably contains a condition that any judgment or order is not to be enforced against the property of a bankrupt without further leave of the Court.
19. It is routine and unexceptional for a debtor to present a Debtor's Petitions after judgment is entered against them for a sum that they cannot pay. This is particularly so if they also face other major liabilities.
20. At the time when Peter Holt presented his Debtor's Petition, both Investec Bank (Australia) Ltd (**Investec**) and Forest Enterprises Australia Ltd (Administrators Appointed) (**FEA**) had obtained judgment against him. At the same time, he was involved in or was threatened with litigation by a number of his other creditors.

21. The creditors with judgments against Mr Holt or who had commenced or were threatening litigation against him and the amounts of their claims in his bankruptcy included the following:
 - (a) Investec - \$242,681.57;
 - (b) Timbercorp Finance Ltd (In Liquidation) (**Timbercorp**) - \$2,464,964.40;
 - (c) FEA - \$99,553.51;
 - (d) Bank of Queensland Ltd - \$74,007.10; and
 - (e) MIS Funding No. 1 Pty Ltd - \$147,468.14
 22. In addition to the foregoing, Mr Holt also then was indebted to Westpac in the sum of \$1,523,000.00.
 23. Even if all of the funds that I potentially could have recovered from the transactions referred to in paragraph 8 above using the claw back provisions were notionally added back into his estate, my investigations disclose that, as at 10 June 2010, Peter Holt could not have paid the abovementioned debts. Consequently, he was insolvent at this date and the presentation by him of a Debtor's Petition in June 2010 cannot seriously be criticised.
 24. This is particularly so given that Investec had proceeded to present a Creditor's Petition in bankruptcy against Mr Holt which was returnable before the Court for the first time on 17 June 2010. If Peter Holt had not gone bankrupt on his own petition on 10 June 2010, he almost certainly would have gone bankrupt on Investec's petition relatively soon afterwards.
 25. I also would observe that, for a person to become bankrupt on a Debtor's Petition, it is necessary for their petition to be accepted by the Official Receiver. Subsection 556(3AA) of the Act gives the Official Receiver a discretion to reject a petition if it appears that a debtor can pay all of their debts and merely is unwilling to pay all of their creditors or a particular creditor or group of creditors. Mr Holt's petition was not rejected by the Official Receiver.
- D. Page 3 of the HNAB-AG Submission – That I was or am a friend of Peter Holt
26. Peter Holt became bankrupt on 10 June 2011 in consequence of the Official Receiver accepting on this date a Debtor's Petition that had been presented by Mr Holt. I became the trustee in bankruptcy of his estate on the same date.
 27. Prior to becoming Mr Holt's trustee, I had not met him or had any other contact or dealings with him. During the period that I was his trustee in bankruptcy, my dealings with him were strictly on a professional basis. I have had no contact with Mr Holt since ceasing to be his trustee.
 28. The claim that I was or am a friend of Peter Holt simply is incorrect.

29. In addition, as is apparent from the NPII search for Peter Holt, I caused a notice of objection to Mr Holt's discharge from bankruptcy to be lodged on 21 September 2013. This has had the effect of extending Mr Holt's bankruptcy, hardly the action of a friend.
- E. Page 3 of the HNAB-AG Submission – That I am part of an alleged fake-debt sham bankruptcy ring
30. I categorically deny that I am or have ever been part of an alleged fake-debt sham bankruptcy ring.
31. Beyond saying this, it is difficult for me to respond to this claim as the authors of the HNAB-AG Submission have not condescended to provide any particulars of their allegation, notwithstanding the seriousness of it. I can though offer the following comments.
32. An allegation to the effect of that made by the authors of the HNAB-AG Submission has never previously been made against me either by the Inspector-General in Bankruptcy or by a creditor in relation to any of the estates of which I am or have been trustee. In this regard, contrary to what the authors of the HNAB-AG Submission perhaps may think, no such allegation was made against me in the Federal Court proceedings referred to at page 9 of the HNAB-AG Submission.
33. As is apparent from the information set out at paragraphs 20 to 24 above, on the basis of his then clearly genuine debts, Peter Holt was insolvent when he presented his Debtor's Petition in June 2010. His bankruptcy cannot seriously be regarded as a sham or fraud.
34. More generally, the allegation appears to proceed on a misconceived view as to the nature and effect of bankruptcy. The authors of the HNAB-AG Submission seem to be of the view that, if a person goes bankrupt in circumstances where they have the benefit of significant assets which do not vest in or cannot be recovered by a trustee in bankruptcy, then their bankruptcy is a fraud or a sham.
35. This view simply is erroneous. The Act operates only in accordance with its terms. It is quite legal for a person to arrange their affairs to minimise the effect of a possible future bankruptcy. If they do so, this may mean that they will enjoy the benefit of assets that are beyond the reach of a trustee in bankruptcy. As I have endeavoured to explain above, it is commonplace for professional persons to do so. This does not make their subsequent bankruptcy a fraud, a sham or fake.
- F. Page 9 of the HNAB-AG Submission – That I failed to respond to correspondence regarding what the HNAB-AG believed to be a fake bankruptcy despite being obliged to do so
36. Neither I nor the manager who had the day to day conduct of this estate under my supervision have any recollection of receiving any correspondence from the HNAB-AG regarding their concerns regarding what they believe to be a "fake bankruptcy" by Peter Holt.

37. Furthermore, even if I had received such correspondence, the claim that I was legally obliged to respond to it is incorrect. Relevantly, subsection 179(2) of the Act requires me to answer an inquiry by a creditor in relation to a bankrupt's estate or affairs.
 38. Only two persons, apparently a husband and wife, claimed to be creditors in the estate of Peter Holt on the basis of loss suffered by them from advice given by him. I have no legal obligation to respond to correspondence from a self-styled Action Group.
 39. In any event, for the reasons given at paragraphs 20 to 24 and 33 to 35 above, the belief of the HNAB-AG that the bankruptcy of Peter Holt is a "fake bankruptcy" is quite erroneous. As previously mentioned, this belief appears to be based on a misconceived view of the nature and effect of bankruptcy.
- G. Page 9 of the HNAB-AG Submission – That the liquidators of Timbercorp applied to the Federal Court to have me removed as trustee of the estate of Peter Holt
40. By an application filed on 11 November 2014, Timbercorp applied to the Federal Court for, amongst other things, an order that I be removed as trustee of the estate of Peter Holt.
 41. This application was made without prior warning to me and in circumstances where Timbercorp's solicitors had attended at my office several months earlier to inspect the files of Holt's and a number of other administrations for the stated purpose of enabling Timbercorp to consider whether it would provide funding to me as trustee of these estates.
 42. In my view, there was no merit in Timbercorp's application that I be removed as trustee of the estate of Peter Holt.
 43. However, I took the view that if Timbercorp, which was a major creditor in the estate, had concerns about my administration of the estate, then, even if these concerns were completely erroneous or misconceived, it was appropriate for me to cease to be the trustee of the relevant estate and for another trustee to be appointed in my place.
 44. This was particularly so where I was without significant funds in the estate of Mr Holt and Timbercorp had made it clear that it was prepared to fund another trustee, but not me, to conduct further investigations into his affairs.
 45. Accordingly, when Timbercorp's application came before the Court for the first time on 28 November 2015, I applied to the Court to accept my resignation as trustee of the estate of Peter Holt pursuant to section 180 of the Act. My resignation was accepted by the Court and no adverse findings were made against me.

- H. Page 9 of the HNAB-AG Submission – That I have relinquished my “license to practice”
46. On 11 February 2015, I requested the Inspector-General in Bankruptcy to allow me to voluntarily cease to be a trustee in bankruptcy in accordance with section 155G of the Act. I anticipate that this request will be accepted in the very near future. I continue to be an official and registered liquidator.
47. Contrary to one reading of the HNAB-AG Submission, my request to the Inspector-General was unrelated to the matters raised in the Timbercorp application.

Yours Faithfully

A H J Wily

National Personal Insolvency Index
Insolvency and Trustee Service Australia

Extract as at 03rd June 2015 11:01AM

Name: HOLT, PETER RAYMOND

Date Of Birth:	30-JAN-1955	Administration Type:	Bankruptcy
Administration Number:	VIC 2031/11/6	Petition Type:	Debtors Petition
Date Filed:	10-JUN-2011		
Date SA Filed:	10-JUN-2011		
Entered On NPII:	10-JUN-2011		
Date Ended:	< No Data Held >		
Result:	< No Result >		

Address:

Occupation: Accountant (General)

--- Trustees ---

Name:	NICK MELLO
Bus Name:	GRANT THORNTON MELBOURNE
Address:	LEVEL 30 RIALTO 525 COLLINS STREET MELBOURNE VIC 3000
Phone:	03 8320 2222

The information in this extract comes from the National Personal Insolvency Index at the time and date indicated in the extract. If you consider that the information contains errors, please promptly advise the Insolvency and Trustee Service Australia on 1300 364 785.

National Personal Insolvency Index
Insolvency and Trustee Service Australia

Extract as at 03rd June 2015 11:01AM

Name: HOLT, PETER RAYMOND

OBJECTION

Date Filed:	21-SEP-2013	Date Recorded:	21-NOV-2013
Date Discharge Due:	11-JUN-2016	Result Date:	< No Data Held >
Objector:	Trustee		
Objection Result:	< No Data Held >		
Result Reason:	< No Data Held >		
Result Person:	< No Data Held >		

GROUNDS

Description: S149D(1)n – Failed to disclose beneficial interest in any property
Result: Filed
Result Person: < No Data Held >
Result Reason: < No Data Held >
Result Date: < No Data Held >

GROUNDS

Description: S149D(1)aa – Any transfer is void against the trustee because of Section 120/122
Result: Filed
Result Person: < No Data Held >
Result Reason: < No Data Held >
Result Date: < No Data Held >

Overall Summary This individual is an undischarged bankrupt.

Extract Complete

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