Australian Government
Insolvency and Trustee Service Australia
Office of the Chief Executive and
Inspector-General

4 July 2008

The Committee Secretary
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Chafer

INQUIRY INTO THE EFFECT OF THE EFFICIENCY DIVIDEND ON SMALL AGENCIES

Thank you for the invitation to make a submission to the Committee's inquiry. This submission aims to address the terms of reference broadly.

The Insolvency and Trustee Service Australia (ITSA) is an executive agency in the Attorney-General's portfolio which administers and regulates the personal insolvency system.

In May 2008 ITSA had 290 (ASL) employees together with a further 40 contractors. The annual operating budget for 2007-08 is $38.2m and only 3.5% of that is derived from section 31 receipts (retained by the agency).

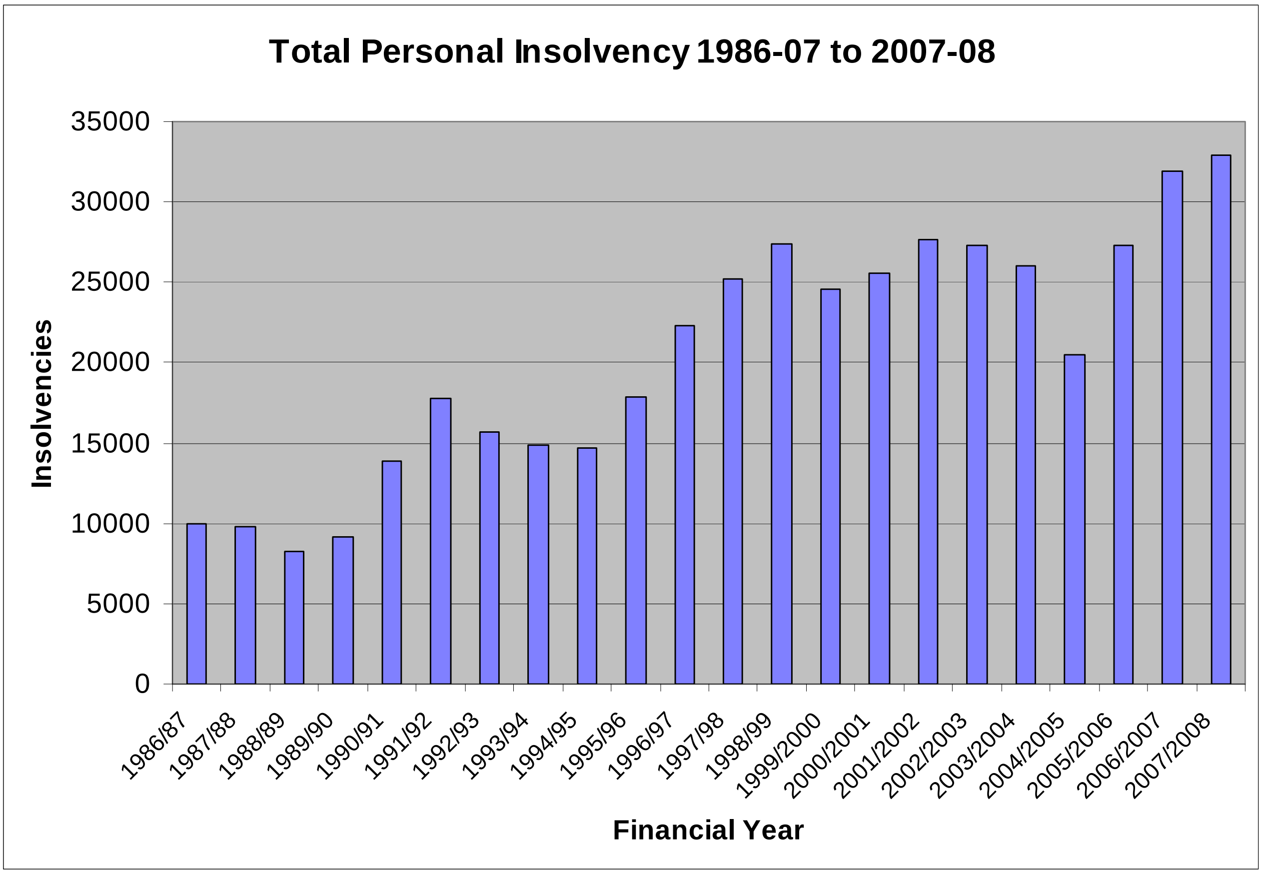
ITSA has six outputs which support its outcome: *To provide a personal insolvency system that produces equitable outcomes for debtors and creditors, enjoys public confidence and minimises the impact of financial failure on the community*. Those outputs are:

- legislative policy and reform: advise government on appropriate reform to the *Bankruptcy Act 1966* and related legislation.
- registry and compliance: ensure compliance by debtors, bankrupts and their associates, and practitioners and others with the requirements of the Bankruptcy Act and associated legislation by:
  - operating the bankruptcy registry, where debtors' petitions are lodged (26 000 pa), debt agreement proposals are processed (8200 pa) and public records on insolvency are maintained, and
  - exercising Official Receiver powers to assist trustees to obtain information and recover property (issue 400 formal notices pa requiring action).
- regulation of bankruptcy trustees and debt agreement administrators: regulate the administrations and activity of 200 trustees (including the Official Trustee) and 30 debt agreement administrators (by conducting annual inspections and investigating complaints).

- administration of bankrupt estates and other arrangements: whenever private bankruptcy trustees or other administrators are not appointed, ITSA as the Official Trustee administers bankruptcies (23 000 pa) and Part IX debt agreements (250) and Part X personal insolvency agreements, and
- investigation of alleged offences under the Bankruptcy Act: investigate possible offences (1100 referrals pa) and prepare briefs of evidence for prosecution.

ITSA also acts as a special trustee pursuant to court orders, to locate, control and sell property under the *Proceeds of Crime Act 1987*, *Proceeds of Crime Act 2002* and *Customs Act 1901*.

These mainly regulatory and compliance responsibilities, which are fulfilled in accordance with the *Bankruptcy Act 1966*, are exercised in an environment which has experienced a long term trend of growth, averaging almost 7% per annum over the last 20 years.



2006-07 saw an historical peak of activity under the Bankruptcy Act (31,971 bankruptcies and other personal insolvencies [debt agreements and personal insolvency agreements] which was an increase of 17% on 2005-06 activity and that total was exceeded in 2007-08 by a further 2.9%.

For ITSA, in 2007-08 the effect of the 1.25% efficiency dividend was $460,000 (equivalent to the average value of 5.5 positions) and, together with the pro rata effect of the special 2% efficiency dividend ($170,000) was equivalent to the average value of 7.7 positions.

In 2008-09 the total effect of both efficiency dividends will be $1,195,000 or the equivalent of an average 14.4 positions. The 2% efficiency dividend reduces ITSA's base appropriation by $741,000.

The impact of the efficiency dividend should not be considered alone. Its effect is compounded first by the rate of growth of supplier costs which, particularly in connection with information and communications technology costs and property operating expenses costs, can run higher than the value of the official price adjustment (2.3% in 2007-08). Examples include software licences and IT contractor costs, and the costs incurred when operating a broader range of computing services (online and non online methods of conducting business. Increased dependency on reliable computer systems, leads to more contingency and disaster recovery arrangements, and consequential costs for security and protection arrangements.

Secondly, levels of remuneration paid to staff are driven by cyclical enterprise bargaining/collective agreements which, on average, deliver annual increases of the order of 3-4% in order to maintain relativity with other agencies and private sector employers. In each of the last four years levels of remuneration under ITSA's collective agreement have increased by 4% and, in one year (2007) there was a cumulative effect of 4.5%. ITSA's professional base mainly comprises accountants and lawyers, disciplines which demand competitive levels of remuneration.

The other significant area of budgeted expenditure for ITSA relates to depreciation, where (again) the general appropriation funding model (including application of the efficiency dividend to depreciation) effectively means a real reduction in funding as the cost of capital items increases at a rate higher than the official price adjustment.

ITSA therefore finds itself in the position where, against a backdrop of increasing workload, it:

a. is paying for increases in the cost of property rental
b. is paying for increases in the cost of general administrative/supplier items
c. is having to pay increases in salary rates to be competitive with the market (for lawyers and accountants), and
d. is providing for increases in depreciation costs driven by increases in the cost of capital items.

All of these are increasing at a rate that exceeds the rate of increase in funding.

As a result of all these factors, ITSA has to reduce staff numbers in 2008-09 by some 35 employees. Those staff had been addressing the long term trend of growth in demand for ITSA's services, and had been able to be funded in 2007-08 due to workload funding supplementation in the 2007-08 Budget. That supplementation was also provided for the 2008-09 year and is due for review in the context of the 2009-10 Budget. As those employees were mainly non ongoing staff and contractors, ITSA has been able to manage this adjustment with minimal redundancies.

With limited opportunity to vary the quantum of property rented or capital items required, the burden of any efficiency dividend therefore falls on salaries and general administrative items. Employee numbers are generally pruned each year to accommodate increases in salary rates, and if pruned further impinge on service delivery. If such an impact on service delivery is to be avoided, then the efficiency dividend cuts would have to be made in general administrative items. However, that would make the budgets in that area untenable. The only alternative is to spread the cuts across salaries and general administrative items, inevitably impinging on service delivery at a time when workloads are growing.

Smaller agencies can also be hard pressed to distribute their annual operating budget between their core services and corporate support services. Multi-tasking is common in smaller agencies. This is particularly so in a geographically distributed agency such as ITSA which has a national office in Canberra together with eight service delivery offices: one in each capital city (except Darwin), and also in Townsville.

At a time when there are increases in externally-generated workload, there are also growing expectations and requirements in relation to corporate and financial governance and reporting (eg levels of certification, openness and transparency). These expectations or requirements can disproportionately affect small agencies, which frequently have identical corporate governance accountabilities (in areas such as finance, energy usage, environmental management, access and equity) to larger agencies.

While the compilation tasks to satisfy these accountabilities are arguably less complex in small agencies, the size of their corporate teams may be many times smaller, placing significant burdens on a few staff. If those small agencies have some complexity associated with their corporate responsibilities, as ITSA does with its financial framework, then those burdens are exacerbated. Both the ANAO and also ITSA's internal auditor (KPMG) have remarked on the "extent and complexity of the legislation administered and regulated by ITSA, and the variety of business processes and systems required to ensure compliance with …the functional responsibilities (ANAO)."

The end result is that ITSA is finding it increasingly difficult to satisfy all demands within what is, effectively, a shrinking budget. The ongoing need to find and apply productivity improvements to satisfy all these demands when appropriations to agencies are only increased minimally (or reducing) places pressures on individuals to continue to do more with less. Morale and motivation levels suffer, as demonstrated by employee opinion surveys.

Risk management and prioritisation are common answers to the question of how will we manage - and in small teams with only, say, four or fewer employees even short term absences mean that mandatory tasks take precedence over opportunities to improve practices and services, and while those tasks are done they may be done less well. It is difficult to strive for high standards when the in tray (electronic or hard copy) is constantly full to overflowing.

For example, at times when this agency is striving to meet growing client and stakeholder demands (whether those be sheer numbers of new matters or are related to increasing reporting requirements), matters such as client requests for more detailed statistics on events in the personal insolvency system may have to be denied, or they may only receive token attention. To continue this example, the opportunity to conduct research into the causes behind personal insolvency activity rarely gains the attention it warrants. ITSA holds the basic data relating to personal insolvency events and yet ability to produce reports to containing that data and analyse it is continually thwarted by more immediate demands.

Smaller agencies, particularly those with well-established operational responsibilities, can have limited scope for new policy initiatives (NPPs) and, hence, less scope for generating a broader funding base. Major NPPs (greater than $10m) ordinarily will not be possible when total revenue is only 3.8 times that amount, and when there is a general policy that portfolio departments or agencies will absorb minor NPPs or relatively small program changes. However, there are times when smaller agencies' needs are recognised. ITSA received additional NPP funding of $0.4m in 2007-08 to support capability in the proceeds of crime area, and a further $1.8m to enable the increased regulatory and compliance responsibilities under the debt agreement system arising from amendments to the Bankruptcy Act which became operative in July 2007.

There is limited scope in a cost recovery environment to generate section 31 receipts which boost an agency's resources – most of ITSA's activities have a legislative base, producing administered revenues that are returned to the Consolidated Revenue Fund.

ITSA's focus is on compliance and regulation. Ever-diminishing resources mean that risk management is stretched to enable a suitably effective inspection/audit program of registered bankruptcy trustees and debt agreement administrators. This produces added risk when the regulatory and compliance roles are focussed on higher risk areas when conducting inspections/audits. Inevitably that leads to a situation where, over the longer term, lack of attention to lower risk areas can allow standards of practice to deteriorate into higher risk levels (thereby perpetuating lower standards of service and extending risks to the community). The ongoing impact of efficiency dividends will exacerbate this.

Yours sincerely

David Bergman
Acting Chief Executive and
Inspector-General in Bankruptcy

Telephone: (02) 6270 3403
Facsimile: (02) 6270 3413