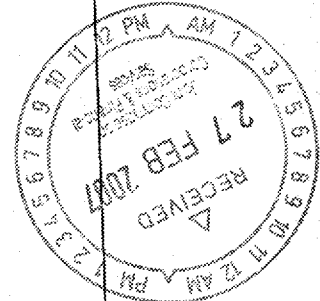


Commonwealth
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<p>To: Mr David Sullivan parliamentary Joint Committee on Corporations and Financial Services</p> <p>Organisation: and Financial Services</p> <p>Phone:</p> <p>Fax: 02 6277 5719</p> <p>Date: 27/02/2007</p>	<p>Bethany Chadwick (for Dr Vivienne Thom Acting Commonwealth Ombudsman)</p> <p>From: Ombudsman)</p> <p>Title: Executive Assistant</p> <p>Phone: 02 6276 0120</p> <p>Fax: 02 6249 7028</p> <p>Pages: three (incl cover)</p>
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**Message:**

Dear Mr Sullivan

I refer to our recent telephone conversation and attach herewith a copy of a letter dated 23 February 2007 from Dr Vivienne Thom, Acting Commonwealth Ombudsman. The original will be posted today.

If you need any further information, please do not hesitate to contact this office.

Bethany Chadwick
Executive Assistant to the Commonwealth Ombudsman
Tel: 02 6276 0120

CONFIDENTIALITY AND PRIVACY NOTICE

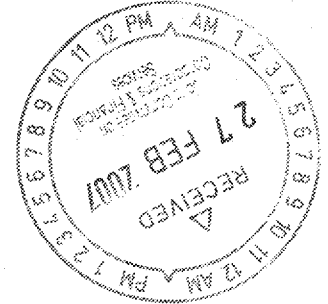
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Our ref: P/2007-300074

23 February 2007

David Sullivan
 Committee Secretary
 Parliamentary Joint Committee on Corporations and Financial Services
 Department of the Senate
 PO Box 6100
 Parliament House
 Canberra ACT 2600



Dear Mr Sullivan

Inquiry into the Exposure Draft of the Corporations Amendment (Insolvency) Bill 2007

Thank you for the Committee's invitation to the Ombudsman to make a submission to the above inquiry.

The Commonwealth Ombudsman

The office of Commonwealth Ombudsman is established by the Ombudsman Act 1976 and the Ombudsman acts under that Act to investigate administrative actions by almost all Commonwealth agencies and actions of the Australian Federal Police. The Commonwealth Ombudsman is also the Defence Force Ombudsman, the Taxation Ombudsman, the Immigration Ombudsman, the Postal Industry Ombudsman, the Law Enforcement Ombudsman and, under ACT self-government legislation, the ACT Ombudsman.

The Ombudsman received 17,384 in-jurisdiction approaches in 2005-6, and investigated 5087 of them. As well as cases generated by complaints, the Ombudsman conducts investigations on an "own motion" basis into wider issues in public administration. The Ombudsman has extensive investigation powers, but prefers to investigate with less formality and greater efficiency where possible.

The current Ombudsman is Professor John McMillan. He is assisted by two Deputy Ombudsmen and about 150 staff, working from offices in Canberra and all capital cities. The Ombudsman publishes an annual report, and releases some investigation reports publicly.

Focus of submission

The Ombudsman has jurisdiction to consider complaints about the Australian Securities and Investments Commission (ASIC). In the financial year 2005-6, 183 in-jurisdiction approaches were made to the office of the Ombudsman about matters relating to ASIC.

The draft Bill proposes to amend the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) expressly to permit ASIC to use the investigatory powers in Part 3 of the

ASIC Act when ASIC has reason to suspect that a registered liquidator has not, or may not have, faithfully performed, or is not, or may not be, faithfully performing, his or her duties as a liquidator. The explanatory memorandum to the Bill indicates that this is intended to clarify that ASIC has recourse to its compulsory powers when investigating the conduct of liquidators.

We receive complaints each year (10 for the calendar year 2006) about the way in which ASIC has dealt with issues about liquidators. These are typically about cases where ASIC has declined, in the exercise of its discretion, to investigate a complaint made to it about a liquidator.

We have not in the recent past dealt with any complaint where the reason for ASIC declining to investigate a complaint was a perceived deficiency in ASIC's powers for that purpose. We nonetheless welcome the clarification that the Bill provides that ASIC has the benefit of its full suite of compulsory powers to investigate complaints about liquidators.

We note that the power to investigate complaints about liquidators that is proposed in the Bill is drawn in like terms to ASIC's power to investigate contraventions of the corporations legislation generally under s 13(1) of the ASIC Act. We anticipate that, as with alleged breaches of the corporations legislation, ASIC will continue to regulate liquidators by selecting for investigation those complaints that it considers most closely meet its regulatory priorities.

We appreciate that such an approach is in conformity with the nature of the power conferred on ASIC by the Parliament to be selective about the cases it investigates. We have observed, however, in the complaints made to us about ASIC, a mismatch between the expectations of some members of the public that ASIC should investigate all well-founded complaints that are made to it, and the actual position.

We are currently discussing with ASIC ways in which it could make it clearer, in the context of its general powers to investigate breaches of the corporations legislation, that it has a broad discretion as to what matters it chooses to investigate, and that it does not have to investigate even well-founded complaints that are made to it if they do not meet its regulatory priorities.

We are also discussing with ASIC the level of information that it makes available to people who complain to it about the reasons why it has chosen not to investigate their complaints.

We will continue to work with ASIC to promote an understanding in the community that ASIC is operating within the bounds of its statutory functions when it exercises a discretion not to investigate complaints that are made to it either about liquidators or about breaches of the corporations legislation generally.

Should you wish to contact us in relation to this submission, our contact officer is Paul Considine who may be reached on 03 9667 2514 or at paul.considine@ombudsman.gov.au.

Yours sincerely,



Dr Vivienne Thom
Acting Commonwealth Ombudsman