

**AUSTRALIAN PRODUCTIVITY COMMISSION  
ANNUAL 2010 REVIEW OF REGULATORY BURDENS ON  
BUSINESS: BUSINESS AND CONSUMER SERVICES  
DRAFT RESEARCH REPORT**

***REGULATORY BARRIERS FOR OCCUPATIONS:  
INSOLVENCY PRACTITIONERS***

**SUBMISSION  
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FOR ATTENTION OF:  
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## 1. INTRODUCTION

I am a Chartered Accountant and Registered Liquidator operating as a sole practitioner. I commenced my career in the insolvency profession in 1979 and since then have worked on and managed many personal and corporate insolvency assignments.

## 2. DRAFT RECOMMENDATION 4.4

This submission concerns the Productivity Commission's recommendation that:

*A taskforce should be established to identify personal and corporate insolvency provisions and processes that could be aligned. The taskforce should comprise officials from the Attorney-General's Department and the Treasury and should also work closely with the Insolvency and Trustee Service Australia and the Australian Securities and Investments Commission. The case for making one regulator responsible for both areas of insolvency law should also be examined.*

## 3. STATEMENTS SELECTED FOR COMMENT

My comments are directed mainly at the following statements made in the Commission's report:

(a) *"Different regulatory treatment of the administration of personal insolvency and corporate insolvency imposes an unnecessary regulatory burden on insolvency practitioners and is impeding the efficient conduct of the insolvency regime. A reform taskforce should be established to identify provisions and processes that could be aligned. The Government should also examine the case for making one regulator responsible for both areas of insolvency law."*

(b) *"Regulations, court rulings and ITSA and ASIC Guides support these Acts. Also relevant are the IPA Code of Professional Practice for Insolvency Practitioners and the Accounting Professional and Ethical Standards Board's professional standard covering Insolvency Services. These professional standards apply to both personal and corporate insolvency practitioners."*

(c) *"The Insolvency Practitioners Association (IPA sub. 7) are concerned that the different regulatory treatment of the administration of personal insolvency ... and corporate insolvency of companies ... is impeding the efficient conduct of the insolvency regime and imposing an unnecessary regulatory burden on insolvency practitioners. The IPA highlights in particular: the costs of dealing with separate regulators — ITSA ... and ASIC — and keeping up-to-date with changing compliance and reporting requirements of both; and the costs of practitioners setting up compliance systems, collecting information, preparing and checking reports, form-filling, document storage, for both. (IPA sub. 7, p. 5)"*

## 4. THIRD LAYER OF REGULATION

In my view there is a third layer of regulation which imposes a burden on insolvency practitioners, namely the IPA's Code of Professional Conduct for Insolvency Practitioners (COPP).

The COPP is wide-ranging, with 22 sections and numerous sub-sections of rules, running to 108 pages. It was introduced as a draft in 2007 and finalized in 2008. It replaced several other Codes, some of which had been amended several times.

The screenshot shows the IPA website's navigation menu and a page titled 'Superseded Codes'. The page lists several documents that have been replaced by the new Code of Professional Practice, along with their respective dates.

Document	Date
<a href="#">Code of Conduct</a>	1992
<a href="#">Guide to Fees 1999</a>	1999
<a href="#">Statement of Best Practice: Remuneration</a>	2000
<a href="#">Guide to Fees: Reason for removal of Scale of Fees</a>	2000
<a href="#">Statement of Best Practice: Independence on the appointment of a Voluntary Administrator</a>	2003
<a href="#">Statement of Best Practice: Section 439A reports in a Voluntary Administration</a>	2001
<a href="#">Statement of Best Practice: Competition and Promotion</a>	2005
<a href="#">Statement of Best Practice: Calling and Conducting Creditors' Meetings</a>	2005

In recent years insolvency practitioners have had to contend with the enormous burden of trying to assimilate the new, expanded and changed professional codes, rules and recommendations. They know that the COPP will be used as a guide by magistrates and judges when called upon to consider an insolvency practitioner's behaviour. (This impact is acknowledged in statement (b) above.)

In my view the massive COPP and the history leading up to it's somewhat hasty introduction need to be seriously considered when examining claims that insolvency practitioners feel overwhelmed or overburdened by regulations.

In other words, it is not just the differences between official laws and guidelines which are causing increased regulatory burdens.

In several areas the COPP's requirements differ from and are more onerous than the requirements of the official laws and guidelines. This also causes confusion and inefficiencies.

Personally, I believe that the new COPP requirements are, by and large, a good attempt at improving ethical standards and practices in the insolvency profession. But from what I hear from some other practitioners who have small to medium-sized practices, they get annoyed by time consuming professional standards that exceed those of the regulatory authorities.

If it has not already done so, I respectfully suggest that the Productivity Commission

consider whether it could have a role in advocating to professional associations generally that, to prevent unnecessary regulatory burdens on businesses, their requirements of members should seek to merge seamlessly with government regulations and not add to them.

## **5. SERIOUSNESS OF PROBLEMS**

For the following reasons I think the IPA has somewhat overstated the seriousness of the problem:

- Many insolvency practitioners do not do personal insolvency work.
- Accountants working in other areas of law must be aware and keep abreast of differences in laws. For example, the taxation laws vary greatly between individual taxation, corporate taxation, trust taxation, superannuation fund taxation, etc.

Nevertheless, I agree that there would be benefits obtained from harmonisation of the official rules dealing with claiming and fixing of remuneration and any court review of that process, proofs of debt, and payment of dividends, where the principles are the same.

I would strongly suggest that as part of its deliberations the Productivity Commission and/or the new taskforce should survey individual insolvency practitioners (and not just those that are members of the IPAA) on their feelings and thoughts.

## **6. APPROACH TO THE REVIEW**

For scores of years each branch of insolvency law – personal and corporate - has been subjected to numerous examinations and reviews.

In my view the Productivity Commission and/or the new taskforce should assume as a starting point that the laws are what they are for good reasons.

In other words, the Productivity Commission and/or the new taskforce should take a conservative and cautious approach to its mission.

I note that it is to “work closely with the Insolvency and Trustee Service Australia and the Australian Securities and Investments Commission”. As we all know, in bureaucracies people move in and out and on. Personal knowledge of the history and the important principles behind existing laws can be lost. Essential knowledge might only be found in written texts and other material in libraries

Yours faithfully,

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