Submission
No 3

DEBT RECOVERY IN NSW

Name: Mr Peter Coorey

Date Received: 9/05/2014

Partially Confidential

9 May 2014

The Committee Manager
Legal Affairs Committee
Parliament House
Macquarie St
Sydney NSW 2000

Also submitted online.

Dear Sir / Madam

Inquiry into Debt Recovery in NSW

Please accept my following submission relating to The Legal Affairs Committee's inquiry into debt recovery in NSW.

I am of the opinion that our current laws allow financial responsibilities to be avoided and provide inequity in the treatment of people owing amounts.

In particular I believe that the current company law allows for an abuse of receivership and liquidation practices to the detriment of honest creditors.

Since 2012 our family business has experienced three separate cases of loss from a party which has claimed voluntary liquidation whilst continuing to trade in another business name and with no apparent financial loss during their transition. These events have resulted in over $300,000 of amounts due to our business being effectively 'written off' by the liquidating company whilst the business of the liquidated company continued to operate under a new however often very similar name.

For example one company; [redacted] entered voluntary liquidation and the business continues to trade under a registered business name of '[redacted] and sold the actual stock of the liquidated company.

I understand the activity I am referring to is known as 'Phoenix Activity.'

On the above example of [redacted] in order to highlight flaws in current legislation I provide more detail. The liquidated company comprised of a sole director and sole shareholder. The same person is the sole director of new company entity which happened to be a significant secured creditor of the liquidated company with a claim of $1,413,869. This priority debt which the director arranged in advance of the liquidation, significantly outweighed the unsecured creditors debts of $347,782. This allowed the sole director and shareholder to recover anything

of value from her company which she placed into liquidation whilst leaving nothing for the unsecured creditors.

The liquidator represented the sole director on this matter and on other company liquidations in the past which involved the sole director and the sole director's spouse. The liquidator continued to facilitate liquidations despite the pattern of the liquidator's clients continuing trading under a new entity whilst liquidating a company to the detriment of creditors.

I sent a complaint on the above company's conduct to ASIC on 15 November 2012 who responded to advise that all was in order including the liquidators conduct. I found ASIC to be ineffective and was left disillusioned as ASIC confirmed they had reviewed the above company and liquidator and found no wrongdoing.

Another example from which we suffered was a large company, [redacted] t/as [redacted] was placed into receivership in January 2013 with unsecured creditors receiving very little or nothing of what was owed to them. At the same time the managers of the company instigated a management buy out in the name of a new proprietary limited company and maintained trading whilst avoiding significant debts of the original company.

In the above examples during the liquidation both companies maintained their original business internet websites and I could not find information on their websites relating to receivership or liquidation status. Basically customers would not be aware of the liquidation so would assume nothing has occurred.

A final example which occurred in April 2014 illustrates another issue. An Australian subsidiary of an international architecture firm entered voluntary liquidation and sold their projects to another firm. The acquiring firm employed all of the staff of the liquidated firm. The acquiring firm then disclaimed any responsibility and liability associated with the liquidated firms projects thereby leaving the clients exposed. While I appreciate this situation may be difficult to govern I request that it be recognised as from the client's perspective the business is effectively continuing as it had in the past and the business which is benefiting from revenue should be held responsible for the clients entitlements.

Additional Concern

If relevant to this enquiry to the best of my knowledge I understand that people who claim they do not have the means to repay personal debts and declare themselves bankrupt can avoid further prosecution.

One recent case where a person was ordered by a court to repay approximately $12 million for stealing a council's intellectual property then declared they do not have the assets to repay the debt is of concern. In addition I understand that the $12 million was purposefully transferred to other entities in an effort to place it beyond the reach of any creditor.

I am also informed of professional individuals who do not pay their significant tax liability and continue to operate with no penalty. These individuals and this activity is known to the tax department.

I am aware of people serving gaol sentences for unpaid fines of far smaller amounts.

To have my concerns addressed I have met with and corresponded with a Federal Member of Parliament, had discussions with a senior liquidation partner in PricewaterhouseCoopers, and spoken with and corresponded with ASIC as mentioned, all to no avail.

Other Points

- The current financial and legal system allows practices to create complex corporate or other complex entity structures which are simply a sham to either hide wealth or avoid liabilities. Such legal arranges amount to what can be referred to as a 'cheats' charter' and combatitive law should be introduced.

- I am aware of firms such as [redacted] who promote 'low cost liquidation.' I believe that such firms encourage the above, in my opinion, unjust practices and should be restricted in their scope. Or preferably as mentioned above new legislation can prevent such firms from facilitating unjust practices.

- Given the high number of voluntary liquidations where directors continue their directorships and business activities unnoted, and in many cases whilst leaving creditors unpaid, I believe a publicly available register should be created which notes pertinent facts such as the final account balance of the liquidated company's assets, liabilities and disclosure if payments were made to an associated entity or if a secured creditor was an associated entity. This would have a similar effect of allowing the public to be aware of bankrupts.

- The days of the law concept that a company is a separate entity, in particular a proprietary limited company are not appropriate today as the concept is being abused to avoid liabilities. I understand that the tax office now imposes directors of liquidated companies to be personally liable for unpaid superannuation. This policy in a suitable form appears to be relevant to better protect unsecured creditors from directors utilising sharp practices at the expense of creditors.

I am happy to provide additional information.

Yours sincerely

Peter Coorey