

Government must reform regulatory bodies to prevent liquidation frauds

By Adele Ferguson for the Sydney Morning Herald *August 1, 2011*

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ON AUGUST 25, disgraced liquidator Stuart Ariff will appear in the NSW Supreme Court to face charges on 19 counts of criminal fraud. The case comes as the Gillard government weighs up responses to its options paper into reforming the insolvency industry.

Submissions closed on Friday and some of the victims of unscrupulous liquidators lodged their responses, hoping it will help persuade the Gillard government to reform an industry that has been dogged by criticism for years.

Indeed, Nationals senator John Williams, who led the Senate inquiry into the industry in 2010, told this column that the coalition would only back changes to the legislation if it included three things: the introduction of a licensing regime to liquidators to enable the Australian Securities and Investments Commission (ASIC) to cancel a licence; the introduction of powers for creditors to enable a majority to dismiss a liquidator at a creditors' meeting; and the requirement of insurance companies to notify ASIC if the professional indemnity insurance of a liquidator lapses.

While these are a good start, they don't go to the heart of the problem - dealing with the failure of ASIC to regulate the industry properly. The senate inquiry found many cracks and recommended that ASIC be stripped of its powers and merged with the Insolvency and Trustee Service Australia (ITSA) into a separate body.

The Gillard government's decision not to deal with the regulator's lax, slow and reactive investigation of complaints has generated criticism, some of which is being vented in the latest round of submissions.

Bill Doherty, a company director and a victim of Ariff, says in a submission filed late last week: "This options paper does in no way address the dysfunction of the insolvency profession or the laxity of ASIC regulation of this industry, which was exposed so vividly in this Senate inquiry ... Perhaps from this latest inquiry some recognition could be paid to the fact that organised crime has recognised this regulatory failure as well and seems to be profiting handsomely from it. (I fear probably not)."

Doherty and the other victims of Ariff have not received a cent in compensation, despite the court ordering Ariff in August 2009 to pay back \$4.9 million after he admitted to 83 counts of gross misconduct including the fictitious creation of accounts in 16 companies, to pay for hairdressing bills, beauty treatments and luxury family holidays totalling \$200,000. Instead of paying his victims back, he became bankrupt, went on the dole and used taxpayers money to pay his legal bills. From then on it became a struggle to properly investigate his estate and the possible trail of money due to lack of funds available to the bankruptcy trustees. This is despite there being matters relating to Ariff's estate that require further investigation. This includes a property sale to a company associated with members of Ariff's family and a claim by the Department of Education, Employment and Workplace Relations concerning a \$70,499 payment it made to Ariff's practice in March 2009 to employees of Aidcom - which the employees never received - and the discovery of 17 boxes of

documents relating to some of the companies Ariff liquidated that were concealed from the trustee under his wife's name, which were then claimed to be subject to legal privilege.

This column can reveal that there is little work going on relating to Ariff's estate because the money has run out. This investigation is now being carried out by creditors.

This is the real-life Keystone Cop outline of what has gone on since the boxes were discovered: ITSA confiscated them, then Ariff pleaded legal privilege, then dropped it and allowed the trustee to examine them. It took almost a year after the boxes were accidentally discovered by the bankruptcy trustee, before the chairman of the committee of inspection, Doherty, finally got to see five of the 17 boxes last Thursday. Firstly, the trustee sent an email to the creditors saying there was nothing of interest to him or anyone else and so the boxes were transferred to the liquidator of Ariff's company Stuart Ariff Insolvency Australia, Lawler Partners. Finally one of Ariff's creditors, CarLovers, was able to persuade Lawler Partners to provide access, after appealing to ITSA. When Doherty finally examined them last Thursday, he said there were three computers in one of the boxes but the contents had not been accessed because no one had a password.

These boxes have been through ITSA, the trustee and a liquidator's hands, yet no one has accessed the computers. The question being asked is why not?

What can be revealed from the creditors' inspection of the documents last week is discussions with individuals with links to organised crime. This might not be of interest to the bankruptcy trustee but they should be to the regulators.

Another submission, which requested confidentiality, said the reasons for making this submission were quite simple: "I detect a sharp departure from the findings and recommendations of the Senate inquiry, which is disturbing to me, hence my last-minute submission." "In short the options paper picks up on the easy outcomes but skirts the elephant in the room, namely the failure of existing regulators to police all insolvency practitioners. There is legislation in place, there are regulators in place - but either the failure to respond or delayed action has led and continues to lead to corrupt and criminal behaviour, and at least the perception of same, which is just as bad, because perpetrators know that they will not be audited, pursued, exposed or dealt with." "Until this elephant is tamed I cannot see how the proposed reforms in the options paper will ever be effective."

Indeed.