

CITY INSOLVENCY DISCUSSION GROUP

Wednesday, 4 July 2018

TOPIC

How Regulators Think and Operate

PRESENTED BY

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RYAN & DUREY

SOLICITORS

*Dealing with
Regulators*

Presented by Martin McCoy

HAVE YOU EVER....

- **Wondered why employees of government departments and other instrumentalities seem so illogical in the way they do things?**
- **Been infuriated at their lack of commerciality?**
- **Despaired at their inability to see things that are obvious to you?**

HELP IS AT HAND....

....because I am going to tell you how to get what you want out of a Regulator.

My own background is in tax, so a lot of the examples I will give are ATO-focused.

However, the principles are applicable to all levels of Government, and probably even to some large corporations.

CONSIDER THE PUBLIC SERVANT

Few Public Servants have experience in business, and do not think like business people. Unlike business, where profitability is the driver, the drivers for Public Servants are:

- 1) The legislation they administer,
- 2) The rulings and guidelines published by their department, and
- 3) Their own internal ways of “doing things”.

HOW TO WORK WITH PUBLIC SERVANTS

- **Public Servants (like most people) want an easy life. Your life will be easier if you make their life easy for them.**
- **Although the Public Service “way of doing things” can be infuriating, don’t let it impact on your dealings, as Public Servants (like most people) are better to deal with when they are in good humour.**

THE LEGISLATION

- It is wise to have a sound knowledge of the relevant legislation, as most (but not all) Public Servants working for the Regulator will have.
- The key is to bring the key aspects of the legislation (by which I mean the ones that advance your case the most) to the attention of the Public Servant in question.

THE OTHER PUBLISHED MATERIAL

- Regulators generate large amounts of written material about how they do things, most of it freely available online.
- This material generally provides a step by step guide to getting what you want.
- Public Servants like to “tick boxes”. It is best to help them to do so.

HOW TO FRAME AN APPLICATION

- Give the Regulator what they ask for, in the form they ask for it.
- If the published material says **“If you want A, you must show X, Y and Z”**, make sure your application says **“I want A, I attach X and Y, and my argument that Z applies is as follows”**.
- Even if there is something that needs to be argued about, make sure the uncontroversial aspects are dealt with in this way.

OVERLOOK THE ILLOGICAL (SOMETIMES)....

- Sometimes Regulators will ask for things that mystify you....
- Unless you know or suspect that what they are asking for means that they are “going down the wrong path”, it is usually best to just provide it.
- **Only argue about things that need to be argued about!**

ESTABLISH RAPPORT

- People are generally more prepared to do things for people who ask nicely (no surprises there).
- It is possible to be nice to Public Servants, but few people are.
- You will be amazed what they will do for you if they like you.
Remember, it is not their money!

THINGS THAT WILL ANNOY YOU

- The strange nature of money (it doesn't mean the same thing to them as it does to you).
- Can't talk to someone local.
- Can't talk to someone face to face.
- Can't talk to someone who knows what they are talking about.
- Can't talk to the same person throughout the dealing.
- Can't talk to someone who has the power to make a decision.

QUESTION: PHONE OR WRITE?

- Answer: Write.
- Am I sure? Absolutely!
- Seriously though, there are some minor things that can be done by phone, but anything remotely serious should be put in writing.

IF ALL ELSE FAILS....

- Most decisions by Regulators carry some objection and appeal rights, and even those which don't can often be challenged using general Administrative Law principles.
- Exercising objection and appeal rights often has the added advantage that a Public Servant who is competent looks at the matter for the first time.

SOME EXAMPLES

- **Let's go and talk to the ATO....**
- **A lesson in what not to do....**

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Next CIDG Session

Wednesday, 1 August 2018

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 **GREGSONS**
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Willis **CKA**