



ASIC

Australian Securities & Investments Commission

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Our Reference: 39045/11

21 November 2011

Mr Sean Butler
5 Henley Place
Attadale WA 6156

BY EMAIL: sbutler@iinet.net.au

Dear Mr Butler

**BUTLER CONSTRUCTIONS PTY LTD (RECEIVER AND MANAGER APPOINTED) ACN 009 371 340 ("Company");
MARK DAVID PETER ENGLEBERT; and
IAN CHARLES FRANCIS**

Thank you for your report of misconduct dated 16 September 2011 and your subsequent correspondence in which you raised concerns about Messrs. Englebert and Francis, in their capacity as Receiver and Manager of the Company

ASIC's consideration of the issues you have raised has taken longer than anticipated. We do apologise for the delay in providing this response.

ASIC's role

ASIC conducts an assessment of every report of misconduct we receive. Section 13 of the *Australian Securities and Investments Commission Act 2001* gives ASIC the power to formally investigate potential contraventions of legislation it administers. ASIC retains discretion as to when further enquiries or investigations are warranted in relation to a specific report of misconduct. In exercising the discretion, we must consider whether the available evidence is sufficient to form the basis for civil or criminal proceedings. We also consider whether any further action would have any regulatory impact by deterring similar conduct or provide a suitable remedy for the conduct in question.

21 November 2011

ASIC's position

Following consideration of the issues you have raised at a senior level, ASIC has decided not to take any further action into the issues you have raised at this time.

To assist you to understand the Receivership process, I **enclose** information sheets entitled "Receivership: a guide for employees" and "Receivership: a guide for creditors". These documents explain that the power of a receiver is set out in the charge document and the *Corporations Act 2001* (Act).

We note your ongoing dispute with the Receiver and Manager in relation to your former employment and entitlements. If you wish to clarify whether and how the "excluded employee" provisions of the Act apply, we suggest that you contact your legal advisor.

In relation to the alleged delay in placing the Lighthouse Beach Resort and the National Hotel on the market, we refer you to www.realcommercial.com.au, which suggests that both properties are advertised for sale.

Although we have decided not to investigate your report of misconduct at this time, this does not prevent you from pursuing any civil remedies otherwise available to you. Your legal adviser can provide you with more information about what other options may be open to you to pursue this matter privately.

The information that you have provided has been added to our confidential database. The information may assist us if we receive future similar reports of misconduct, identifying trends of misconduct and identifying opportunities to propose law reform to Government.

We once again thank you for taking the time to contact us in relation to this matter.

If you have any questions in relation to this letter please contact me on 08 9261 4095.

Yours sincerely



Megan Dillon
Misconduct & Breach Reporting
Stakeholder Services

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