

The Manager
Governance and Insolvency Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: insolvency@treasury.gov.au

1 February 2012

Dear Sir/Madam

**PROPOSALS PAPER: A MODERNISATION AND HARMONISATION OF THE
REGULATORY FRAMEWORK APPLYING TO INSOLVENCY PRACTITIONERS IN
AUSTRALIA**

The Insurance Council of Australia (Insurance Council) appreciates the opportunity to comment on the Proposals Paper: A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia (the Proposals Paper), released in December 2011. The Insurance Council will address in this submission only those aspects of the Proposals Paper which relate to general insurance, in particular Professional Indemnity Insurance (PII).

Chapter 3 – Registration of Insolvency Practitioners

The Proposals Paper suggests that a practitioner would be required to notify the regulator if he or she does not maintain adequate and appropriate professional indemnity and fidelity insurance¹. It is appropriate that the practitioner bears the onus for demonstrating adequate and appropriate insurance is held, rather than the insurer and we therefore support this proposal. (Please see below.)

Chapter 7 – Insurance Requirements for Insolvency

The Proposals Paper states that a practitioner would be required to take all reasonable steps to maintain adequate and appropriate professional indemnity insurance and fidelity insurance, with an increase in the offence from 5 penalty units to up to 1000 penalty units for a breach of this duty. The Insurance Council has no comment on the current and proposed penalties for breach of the insurance requirements or the proposal to enable the regulator to impose industry wide conditions regarding maintenance of insurance cover.

We have no objection to the proposal to align annual practitioner return requirements across the personal and corporate insolvency regimes or the requirement for practitioners to attach proof of insurance upon annual renewal of registration.

¹ Proposals Paper: A modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia, paragraph 54

We are pleased to note that the option previously canvassed in the Options Paper, which would require insurers to notify of lapsed insurance policies, has not been taken up. Insurers should not be required to provide notification to ASIC in the event that an insolvency practitioner terminates their Professional Indemnity insurance policy. As we explained in our submission of 3 August 2011 on the Options Paper, this would present a number of practical difficulties for insurers.

In particular, the systems utilised by general insurers do not cater for the provision of notices to third parties, such as regulators, in respect to cancellation or amendments to professional liability policies. We submit it is appropriate that insolvency practitioners bear the onus of proving that adequate and appropriate insurance is held and maintained.

If you require further information, please contact Mr John Anning, Insurance Council's General Manager Policy- Regulation Directorate at janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO