Institute of Chartered Accountants Australia

8 March 2013

Mr Aaron Jenkinson
Manager, Corporate Governance and Reporting Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: insolvency@treasury.gov.au

Dear Mr Jenkinson

Insolvency Law Reform Bill 2013

The Institute of Chartered Accountants in Australia (**Institute**) welcomes the opportunity to comment on the exposure draft: Insolvency Law Reform Bill 2013 (Primary Amendments) (**draft Bill**) and accompanying Consultation Explanatory Document (**ED**) which was released on 19 December 2012.

Representing more than 72,000 current and future professionals and business leaders, the Institute has a pivotal role in upholding financial integrity in society. Members strive to uphold the profession's commitment to ethics and quality in everything they do, alongside an unwavering dedication to act in the public interest.

Chartered Accountants hold diverse positions across the business community, as well as in professional services, government, not-for-profit, education and academia. The leadership and business acumen of members underpin the Institute's deep knowledge base in a broad range of policy areas impacting the Australian economy and domestic and international capital markets. The Institute has a significant number of members operating as practitioners in the insolvency field. Over recent years we have regularly made submissions on reforms that impact the regulatory framework in relation to insolvency practitioners.

The Institute has welcomed and very much appreciated the opportunity to participate in the government's extensive consultation process on the Insolvency reform package. The nature of the debate over contentious issues has been robust and comprehensive. The Institute has been encouraged by the government's willingness to address drafting and implementation issues identified in the draft Bill.

As previously stated, the acid test for the intended policy outcomes impact of the reforms will be in their implementation. A key missing piece of the reform package is the subsequent Bankruptcy and Corporations regulations which will be released after the draft Bill has been introduced into Parliament. In addition, the second tranche of the reform package, which includes the consequential amendments and transitional measures has also not been released for consultation. Accordingly, a comprehensive analysis of the reform package as a whole has not been possible. Therefore, the Institute's broad support for these reforms is subject to the final analysis of the full regulatory package and alignment with government feedback during the consultation process.

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We have reviewed the draft Bill from the perspective of whether or not it is likely to achieve the government's desired policy outcomes. In terms of practitioner discipline, we believe that the intended policy outcomes of the reform package is for a fair, timely, effective and transparent process for resolving disciplinary matters, and through that, an improvement in practitioner behaviours.

In our view, these reforms will not assist Australian Securities and Investments Commission (ASIC) to conduct their investigations in a manner that will achieve the intended policy outcomes. In particular we draw you attention to the following areas:

- We are concerned with the lack of empirical evidence to justify the move to the Bankruptcy model of a three-member committee as a replacement for the Companies Auditors and Liquidators Disciplinary Board (CALDB) disciplinary process. The Institute recommends the procedural and operational framework of the CALDB be used as a foundational platform, in preference to the procedures that currently apply to personal insolvency committees.

- Also, in our view, the presence of ASIC as a member of the proposed committee presents a perceived conflict of interest given they have the capacity to refer matters directly to the committee. A similar potential conflict situation will arise where the IPA lodges a notice pursuant to the new Subdivision F – *Action initiated by industry body* provision in the draft Bill.

- In terms of improved transparency, unlike the existing CALDB regime, there is no express provision that requires the committee to directly notify the relevant professional bodies of their decision and the reasons for that decision. We consider that in today's co-regulatory environment, transparency around practitioner behaviour is paramount.

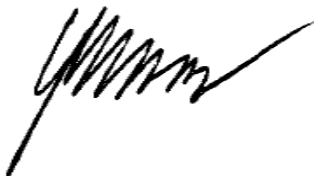
- The draft Bill does not address the potential use of enforceable undertakings (EUs) as one of the options in resolving disciplinary matters. EUs may provide a viable alternative mechanism for dealing with appropriate practitioner disciplinary matters. However, in line with the intended policy outcomes it is important that practitioners, accounting bodies and other stakeholders consider the process to be timely, fair and transparent. The Institute welcomes any further regulatory measures that ensure that the EU process is so enhanced. In this context, the Institute has welcomed the clearer language used by ASIC this year in regards to the use of EUs.

Our over-riding view is that these aspects of the reform package must be addressed in order to achieve a fairer, and more timely and transparent process for the resolution of disciplinary matters.

Our detailed comments on the draft Bill and EM and suggested amendments are set out in the attachment. As Treasury will be aware, the Institute has been a supporter of many proposed reforms that we believe will improve the regulatory framework for insolvency practitioners, as well as harmonising various provisions between the *Bankruptcy Act 1966 (Cth)* and *Corporations Act 2001 (Cth)*. The comments in the attached document focus only on the provisions that we consider require further policy analysis or clarification. We look forward to continuing to work with Treasury to ensure the outcomes of the policy reforms are achieved.

If you have any queries regarding the content of this submission, please contact Ms Jane Nitschke on 08 8113 5504.

Yours sincerely



Yasser El-Ansary
General Manager – Leadership & Quality
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Submission

Divisions 8 – Registration

The Institute supports the underlying principles of the proposed changes but reserves full support until we have the opportunity to review the accompanying regulations.

In terms of minimum accounting qualifications, we anticipate the regulations will implement the removal of the existing preference of accounting over legal studies. As raised in previous submissions, minimum accounting qualifications are necessary for the complex nature of many corporate insolvency appointments. Whilst we understand the rationale behind this change, the Institute remains concerned whether one year's study of accounting is sufficient for the Registered Liquidator (RL) to perform their work to the required and expected high standard. In our view, an applicant should at a minimum still need to have completed a degree in accounting from a recognised tertiary institution.

Division 8 provides a framework for introducing classes of practitioner with restricted registration provisions, which will be further outlined in the regulations. Whilst we generally support the policy intent to broaden the pool and classification of RLs this must be balanced with the need to ensure there is adequate experience across the range of insolvency administrations. Furthermore, practitioner training and experience must not be compromised in order to introduce a more competitive marketplace for insolvency services. Similarly, the accompanying regulations will need to ensure practitioners are equipped to provide the most appropriate advice irrespective of the RL's specific conditional licence restrictions. It is acknowledged that RLs will need to be sufficiently aware of operating within the new restricted licensing regime and to ensure they are adequately and appropriately resourced under the new regime.

In a scenario where there are various classes of practitioners, we do highlight that ASIC will need to ensure that a RL continues to have the necessary support and capacity to undertake the work at all times during their registration. For example, if a RL that is only able to undertake receivership work, leaves a particular firm that had the necessary resourcing and capacity to undertake such work, ASIC will need to consider how it will ensure that the RL has the required support in any new firm.

As part of the government's consultation process on Division 8 of the draft Bill the following issues were discussed:

- Section 8-20(2) provides for a 6 month timeframe for ASIC / the Inspector-General to refer applications of a potential RL to the committee. The Institute recommends a shorter timeframe for referrals of this nature

- The Institute recommends registration committee members are afforded similar protection mechanisms as currently assigned to CALDB committee members

- The Institute welcomes the new Section 8-85 which has been introduced to capture practitioners falsely representing as a Registered Trustee (RT) or RL

- Treasury has confirmed the 3 year renewal process is intended to follow a similar administrative process as required under the *Bankruptcy Act 1966 (Cth)* (Bankruptcy Act) for a RT. The Institute supports this approach on the basis that the process is essentially administrative as discussed. The renewal process will simply require RLs to lodge a form, pay an administrative fee and provide sufficient evidence of their professional insurance cover.

Division 10 – Insurance

The Institute supports the underlying principles of the proposed changes but reserves full support until we have the opportunity to review the accompanying regulations.

We are concerned that ASIC may, by legislative instrument, determine either at an individual practitioner level or more broadly for segments of the profession, what constitutes *adequate and appropriate* professional indemnity and fidelity insurance. Given the unique and highly complex nature of ascertaining insurance cover we consider this provision unnecessary and beyond the scope of the policy reform agenda.

In addition, where the failure to secure *adequate and appropriate* professional indemnity and fidelity insurance is deemed to be intentional or reckless, the penalty regime of 1000 penalty units ($170,000) would appear excessive.

As part of the government's consultation process on Division 10 of the draft Bill the following issues were discussed:

- Section 10-5(2) empowers ASIC / the Inspector-General, via a legislative instrument, to determine 'adequate and appropriate' insurance cover. The Institute recommends this provision be amended to state that ASIC / the Inspector-General may provide *guidance* on what it determines to be adequate and appropriate levels of insurance cover. In addition, Section 10-5(4) deems any lapse of insurance cover a strict liability offence and effectively grounds for automatic cancellation. While we generally support the thrust of the provision, we query whether there should be some 'show cause notice' issued first that does not necessarily result in grounds for automatic cancellation

- Given the proposed registration and renewal process outlined in the registration and renewal provisions, namely Section 8-35(1)(b) and Section 8-80(1)(b), any subsequent regulations need to clearly define what constitutes *reasonably sufficient* 'evidence in writing' of the required insurance coverage.

Division 14 – Notice Requirements

The Institute understands the need for RLs and RTs to keep ASIC or the Inspector-General informed of significant events. However, we believe that Section 14-5(1)(i) may be too onerous on practitioners given there is little guidance about what shall be regarded as 'inaccurate'. We believe further consideration should be given to removing this clause and enabling such inaccuracies to be amended in the subsequent annual return or placing the clause into a separate Section with a reduced penalty provision given that the error could be relatively minor. Or alternatively, we recommend including a materiality threshold within the provision as currently drafted.

As part of the government's consultation process on Division 14 of the draft Bill the following issues were discussed:

- Concerns were expressed regarding Section 14-5(1)(c) whereby a RL or RT could find that a litigant (and potentially a vexatious or frivolous party) issues a bankruptcy notice in the full knowledge that this may cause a review of the practitioner's registrations with ASIC or the Inspector-General, as well as undermining the practitioner's ability to make recoveries for creditors. We suggest that consideration be given to either amending this Section to read 'a bankruptcy notice is issued under the Act and has expired or otherwise not been set aside' or alternatively, ensuring there will be sufficient drafting or the forms to enable a thorough explanation to be given about the circumstances which gave rise to the issuance of such a notice

- We also consider that the timeframes within this Section should be increased to 10 business days given the offence provisions. This proposed timeframe is consistent with the provisions of Section 16-10(1).

Division 16 – Disciplinary & Other Action

As noted in the covering letter, we do not consider that the reforms as outlined in the draft Bill will achieve the intended policy outcomes for fair, timely, transparent and effective handling and resolution of disciplinary matters. As previously submitted in the Institute's responses to the government's Options and Proposals papers, we do not support the removal of the discipline of RLs from the current CALDB regime in favour of the Bankruptcy model, which is based upon the Bankruptcy model's three-person committee process. While we understand the need for harmonisation around other aspects of the reforms, we are not convinced that this model will achieve the intended aims by effectively displacing the CALDB.

Given the government has decided against this recommendation we now turn to the model as proposed in the draft Bill.

Lack of transparency

In terms of transparency, we note that currently the CALDB must notify the prescribed accounting bodies directly of their decision and provide clear evidence. This requirement is specifically referred to under Section 1292 of the *Corporations Act 2001 (Cth)* (Corporations Act) which provides a mechanism for the CALDB to inform the Institute of their findings, as information of this nature is critical to the Institute's own Professional Conduct Processes.

The Institute is concerned that Section 16-70 *Decisions of the committee* does not appear to provide for this form of communication to the accounting bodies or any requirement to issue a media release. This is important for transparency in the process and also to enable appropriate action to be subsequently taken by the professional bodies in relation to the individual. We recommend that Section 16-70 is amended to add an additional clause that specifically requires the committee to notify the relevant professional bodies of their decisions and reasons.

We also note that under Section 16-75 the committee is obliged to provide both ASIC and the practitioner with a report that sets out the committee's decision and the reasons for that decision. And again, there is no obligation upon ASIC or the committee to provide a copy of this report to the Institute or any other professional body.

Conflicts of Interest

In our view, the presence of ASIC as a member of the proposed committee presents a perceived conflict of interest given they have the capacity to refer matters directly to the committee. A similar potential conflict situation will arise where the IPA lodges a notice pursuant to the new Subdivision F – *Action initiated by industry body* provision in the draft Bill. Presently, given the CALDB structure such conflicts would not appear to exist.

Natural Justice

As the Institute has previously submitted it is essential that the new regulatory framework and related disciplinary process accords natural justice to insolvency practitioners in the first instance. The concept of natural justice is broader than that of procedural fairness. It is important that this aspect is respected particularly as it also aligns with the Institute's disciplinary process, the right of appeal by a member to the Supreme Court and also the legislation which established the CALDB. Placing the burden on practitioners to rely only on an appeal process to challenge decisions at first instance (which may be compromised by lack of natural justice) is unfair as it can be a lengthy, stressful and costly process.

In addition, the Institute is concerned that the draft Bill does not define procedural fairness and the accompanying regulations which address this issue have not yet been released for consultation.

Subdivision F – *Action initiated by industry body*

The newly created Subdivision F provides a discretionary referral mechanism for professional member bodies to directly notify ASIC where it reasonably suspects there are possible grounds for disciplinary action.

As part of the government's consultation process on Subdivision F of Division 16 of the draft Bill the following issues were discussed:

- Section 16-85 is intended as a mechanism to allow professional bodies to provide information 'where the professional body deems it appropriate' and the professional body is then to be 'afforded the necessary legal protections'
- The professional bodies will be able to use their own internal processes to assess when the required threshold is reached in order to trigger a notification pursuant to Section 16-85(1)
- Treasury have confirmed that a timeframe for ASIC responses is vital to ensure notices are actioned by ASIC in a timely manner.

Issues tabled during the government's consultation process in regards to Division 16 more broadly included:

- Section 16-10(2) empowers the respective regulator to direct the practitioner to comply with a requirement to lodge 'within 10 business days' after the direction is given. Although Section 16-10(3) provides for such directions to be withdrawn we also recommend the regulators be empowered to provide for an extension to the 10 business days time limit to provide for extenuating circumstances
- Section 16-70(g), as it currently stands, imposes an obligation on 'all other RLs' that they must not allow the RL to carry out 'any of the functions or duties, or exercise any of the powers of a RL on their behalf, for a period of up to 10 years'. ASIC acknowledges that they will need to establish and maintain a public register of those 'on the banned' list to assist practitioners to comply with this new obligation. We also note the views expressed at the government's consultation meetings where ASIC acknowledged such a provision would be reserved for the most serious of offences. Accordingly, we recommend ASIC issue a guidance note about the types of circumstances in which such conditions would be imposed
- Section 16-70(h) empowers the committee to instruct ASIC to publish specified information on the committee's decision and reasons for that decision. In today's co-regulatory environment, ASIC acknowledges the need for complete transparency on such decisions. Further, the regulators acknowledge that to build public confidence in the disciplinary committee process, it is vital that committee decisions and reasons for the decisions are released to the professional bodies and the broader public sphere in a timely and consistently transparent manner
- Section 16-60 as currently framed does not confer an obligation on the committee to hear matters referred by ASIC to the committee. This drafting omission has been noted by Treasury in the consultation process.

Division 18 - Committees

As discussed above and outlined in previous submissions, the Institute remains concerned that there is a lack of empirical data to affirm that the proposed three-person committee regime used under the Bankruptcy model will achieve the intended policy outcomes for RLs under the Corporations Act.

In terms of the disciplinary committee's procedural framework, Section 18-25 states that the regulations will provide for the manner in which disciplinary committees are convened. In the absence of any regulations on the committee's processes and procedures, the EM states:

the reforms will apply the current three-person committee approach currently operating under the Bankruptcy Act to the registration and discipline of registered liquidators.[1]

The Institute does not support this approach and recommends the procedural and operational framework of the CALDB be used as a foundational platform, in preference to the procedures that currently apply to personal insolvency committees. The CALDB has proven to be a fair, just and transparent process – it was designed from the outset to deal with the complex matters brought before it. In particular, we recommend the government draws upon the current CALDB procedural framework in terms of the following aspects of the proposed committee:

- manner in which a committee is convened
- number required for a quorum
- 'disclosure of interests'
- manner in which questions are to be decided
- required qualifications and experience of committee members.

As part of the government's consultation process on Division 18 of the draft Bill the following issue was discussed:

- Section 18-10 empowers the Minister to delegate the Minister's powers to appoint a person to a committee. The provision allows for the Minister to delegate this power to appoint to either ASIC, a member of ASIC or a staff member of ASIC. Concerns were raised in terms of the perception of stacking the disciplinary committee where matters are referred by ASIC, then heard by ASIC representatives, with possibly two representatives from ASIC in a three-person committee, effectively acting as judge and adjudicator.

Division 22 – Remuneration

The Institute supports the underlying principles of the proposed changes but reserves full support until we have the opportunity to review the accompanying regulations.

In terms of practitioner remuneration, there is nothing in the Corporations Act about amending the remuneration provisions to enable a meeting of creditors or the COI to approve a 'former voluntary administrator's remuneration'. In our view, there are some practical issues that currently occur when an administrator has their appointment ended before the normal course of a voluntary administration ends (ie. typically at the 2nd creditors meeting) where they would normally have their remuneration approved. There is a concern whether the Corporations Act currently is sufficiently clear enough to then enable a subsequent meeting of creditors in the liquidation of the company to approve same. To address this issue we recommend Section 449E(1)(b) of the Corporations Act be amended to read 'by resolution of the company's creditors at any meeting'.

As part of the government's consultation process on Division 22 of the draft Bill the following issues were discussed:

- Section 22-10(2) is drafted so that it could be construed as imposing a cap on the first external administrator's remuneration. The government has agreed to investigate a clearer way to express this requirement

[1] EM Paragraph 1.14

- Section 22-35 *External administrator must disclose employment etc of related entities* and its application and interpretation, when applied in conjunction with Section 22-40 *External administrator must not derive or confer profits* is concerning and likely to have unintended consequences for standard business practises. In practical terms, a simple scenario was tabled in relation to use of in-house printing services versus the outsourcing of printed materials in relation to an administration. As currently drafted, practitioners would be required to give disclosure 'even before printing documents on their in-house printer'. To address this situation we recommend moving from pure disclosure to the higher threshold of seeking approval but limiting this obligation to professional fees and disbursements for related entities only. This exemption would not need to extend to third party entities. In addition, we recommend introducing a materiality threshold in terms of seeking creditor approval to control costs on small to low-end jobs

  Further, as currently drafted the protections afforded under Section 22-40(4) in relation to this scenario are unclear.

Division 24 – Funds Handling

Section 24-15(2) requires further clarification. As presently drafted it is unclear in terms of the period that the penalty interest will be payable. For example, is it only the period between the receipt of monies and the date it is banked into an administration account? If this is correct, then such a provision should stipulate how it is to be calculated.

Division 26 – Information

In terms of information, the EM states:

> Default reporting requirements will be prescribed through regulations. These default requirements may be amended by creditor resolution or the COI'.[2]

As previously stated, and in particular in this context, the Institute supports the underlying principles of the proposed changes but reserves full support until we have the opportunity to review the accompanying regulations.

Section 26-10 *Annual administration return* will require trustees and liquidators to lodge annual administration returns within a period of 25 business days. The Institute believes consideration needs to be given to allowing a greater time period, say 2 months, or alternatively providing a 'request for extension' scheme like the Registered Tax Agent lodgement program. In this regard, we recommend the government review the Australian Taxation Office's Lodgement Deferral Program as a model of how such a facility could be established.

The reasons we believe 25 business days is **not** sufficient time are due to the following:

- For insolvency practitioners that are both trustees and liquidators, this places a significant burden on them in the month of July to ensure all returns are lodged on time, whilst at the same time managing 'live' personal and corporate insolvency administration matters. Some practitioners could potentially have at least 500 returns to review in such period

- Further, it is not precisely known what the *approved form will be from ASIC* and we are equally assuming that the *personal insolvency form may be similar to that already lodged*

- In addition, it is common for some of the pre-populated information from ITSA (for example, opening balances) to contain errors and critical time is lost ensuring such issues are rectified

[2] EM Page 24

- Also, practitioners have at times experienced issues with lodging the ITSA annual returns in one batch such that if the same issues occur (as could be the case in the corporate space because the number of administrations may be larger) then the current timeframes do not allow sufficient time for such issues to be resolved and still enable practitioners to lodge on time.

Many practitioners are now storing their files electronically. However, the definition of what constitutes 'books' is more appropriately defined in Section 5 of the Bankruptcy Act in such that it includes reference to electronic storage whereas the definition of 'books' in Section 9 of the Corporations Act is slightly different. The Institute recommends that in order to achieve harmonisation across both regimes, such anomalies should be addressed.

Division 32 – Review of the External Administration

The Institute supports the underlying principles of the proposed changes but reserves full support until we have the opportunity to review the accompanying regulations.

In particular, we acknowledge and support the policy intent of attempting to empower creditors in this regard however, in our view there needs to be a balanced and considered approach to such reviews.

In terms of the proposed peer review process, issues of confidentiality, integrity and reviewer independence, experience and qualifications must be comprehensively addressed in the accompanying regulations.

Sections 32-22, 32-23 and 32-24 enable a reviewing liquidator to be appointed to review an external administration being conducted by another practitioner. We note the position is not mirrored in the Bankruptcy Act where it is the Inspector-General, ie the regulator that undertakes such reviews. We query that given the intent of the draft Bill to harmonise the Bankruptcy Act and Corporations Act why the different position is taken in this regard. An effective peer review process requires benchmark measures to enable the process to be objective and enforceable. Furthermore, we are concerned that the draft Bill does not address who would develop this framework and monitor it.

We would prefer to see that ASIC is equipped to undertake the review process. Further, if the matter is seen as critical by liquidators we argue the appropriate forum for such a matter to be considered is the Court. We can potentially see instances occurring where the practitioner being reviewed may wish to challenge the report prepared by the reviewing liquidator and consequently the Court may be asked to consider the matter. Therefore, we question the likely benefits to creditors when weighed against the additional cost and time taken to resolve disputes should such a situation occur and the practitioner is found to have acted appropriately.

If the proposal proceeds as drafted, then we believe that where a reviewing liquidator is appointed under the above Sections that provision ought to be drafted to require them to provide a completed declaration of independence disclosing relevant relationships to provide transparency about any prior involvement. Accordingly, we recommend Section 60A of the Corporations Act be amended to include a 'reviewing liquidator'.

As part of the government's consultation process on Division 32 of the draft Bill the following issues were discussed:

- Section 32-25 provides that costs associated with the review are to be covered by funds in the administration. However, this mechanism as drafted fails to address situations in corporate insolvencies where there are insufficient funds in the asset pool to cover the costs of such a review

- The government acknowledges there is greater risk in the personal insolvency regime and that there needs to be a safety valve to deter the nuisance or vexatious litigant. The intended policy outcome is that the plaintiff bears the cost however the government acknowledged that this has not been achieved as the provision is currently drafted.

Division 42 – other matters

Section 42-10 – External administrator may assign right to sue under this Act

The Institute broadly supports the policy intent of improved outcomes for creditors by the introduction of a legislated right in the case of solvent liquidations.

As detailed in the government's EM, the Institute agrees that the ability to take civil action to recover company property inappropriately dissipated prior to business failure and hold directors liable for insolvent trading are key mechanisms to address phoenix activity.[3] It is widely acknowledged that a lack of funding is a major obstacle to the commencement of these actions. In addition, these actions may delay the finalisation of administrations as a whole, ultimately to the detriment of creditors. The Institute agrees that the sale of rights of action may enable the value in such rights to be realised in the absence of funding being available and may result in the pursuit of matters which would not otherwise have been able to be pursued.

Given the existing uncertainty as to whether statutory rights of action arising under the Corporations Act may be sold, the Institute supports the proposed extension of the statutory powers of insolvency practitioners in this regard. Essentially Section 42-10 empowers the practitioner to assign any right to sue that vests with the practitioner (or company) during an administration, to a third party.

As part of the government's consultation process on Division 42 of the draft Bill the following issues were discussed:

- Any such assignment must be bona fide and reasonable and would need creditor approval
- Issues may arise in the context of liens and family law applications, particularly in respect of bankruptcy administrations.

Part 1 – Regulator powers

As previously stated, the Institute supports the extension of the powers of the regulator to proactively conduct reviews of practices and individual administrations without suspicion of a breach.

Part 2

206BB Automatic disqualification – failure to give report etc. to external administrator

The reforms introduce a new 'contingent' disqualification provision for directors that fail to comply with their obligations to provide a report as to affairs (RATA), or the books and records of the company to the RL. The new process could be utilised by ASIC either as an alternative or in addition to criminal prosecution.[4]

The Institute broadly supports the proposed automatic disqualification scheme. We acknowledge the government's attempt to incorporate principles of natural justice through the warning and compliance notices process.

As part of the government's consultation process on Part 2 of the draft Bill the following issues were discussed:

- Provision of the RATA and books and records is, in practise, very difficult to enforce as encountered by ASIC and practitioners

[3] EM Paragraph 1.51
[4] EM Paragraph 1.57

- Section 206BB(7)(c) provides for a 3 year disqualification period for such breaches, which may be too lenient to deter such behaviour
- Section 206BB(8) sets the penalty regime for serial offenders. We question whether the proposed penalty regime is strong enough to deter serial offenders. Once again, it could be argued that the proposed '3 strikes policy', for those already disqualified under this Section may be too lenient to deter such behaviour
- Further problems remain in the non-regulated pre-insolvency advice space and contribute to this ongoing issue of lack of cooperation from company directors when faced with insolvency.

Part 3

The draft Bill repeals the existing Corporations Act Section 497 Meetings of creditors and replaces the provision with the new Section 497 *Information about the company's affairs*.

The Institute recommends an extension from the proposed 5 business day requirement to 10 business days, to ensure a realistic timeframe for compliance.

The draft Bill repeals the existing Corporations Act Section 509 Final meeting and deregistration and replaces the provision with the new Section 509 Final account and deregistration.

The Institute supports this approach as there is no need for a final meeting in a creditors' voluntary liquidation.

General comments:

Any reference to contributories in terms of ranking with creditors should be avoided as a contributory has no claim on the asset pool and should not be empowered to enjoy any legislated creditor rights.