6 May 2021

Manager
Market Conduct Division
The Treasury

**Via email**: *MCDInsolvency@TREASURY.GOV.AU*

Dear Manager

# Treasury Laws Amendment (Corporate Insolvency Reforms Consequential) Bill 2021

Chartered Accountants Australia and New Zealand and CPA Australia, together representing over 204,000 professional accountants in Australia, support the intent of the consequential amendments to 'help business remain viable and improve the returns to creditors and employees'. However, as detailed below, we raise concerns about proposals that appear to add complexity for little or no apparent gain.

## Explanatory memorandum

### Corporate insolvency clarifications

**Role of the restructuring practitioner**.

We support elevating the qualified privilege and protection from liability for a restructuring practitioner from the *Corporate Amendment (Corporate Insolvency Reforms) Regulations 2020* to the *Corporations Act 2001* (paragraph 1.25).

However, we do not support the proposed changes that aim to define when a restructuring practitioner (RP) is acting as an agent of the company (paragraph 1.26). Currently, a RP is deemed to be an agent of the company when they are appointed to a company and/or a plan. The proposed change would mean that a RP may or may not be acting as agent of company. This appears to create a risk that will require further legislation to mitigate.

It is unclear what risk arises for a person dealing with a RP. When appointed to a company under a restructure, the RP's role is to offer support and make a statement as to the viability of a plan. On appointment to a plan approved by creditors, a RP can only exercise the functions or duties set out in the plan. Throughout the process, the directors of the company retain control of the company and operate the business.

We understand the intent of the proposed consequential amendments is to make protections under the restructuring process consistent with a voluntary administration (VA). However, they are not consistent processes. Under a VA, a registered liquidator takes full control of the company and, acting in the interests of creditors, operates the business, reporting progress and outcomes to creditors.

The proposed changes to define when a RP is acting as an agent of the company appear to add regulations where none are required. They are contrary to the light touch intention of the restructuring process and could increase the cost on businesses. We recommend no change to the current framework which provides clarity that a RP does act as an agent of the company.

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### Liquidator Requirements under simplified liquidation

We support the amendment that allows a registered liquidator, appointed to a company, to seek creditor approval under Section 477 of the Corporations Act 2001 to compromise debts without calling a meeting of creditors (paragraph 1.33). We note that any such approval would need to be lodged with the Australian Securities and Investments Commission and should not be defined as a 'notifiable event' under the Cost Recovery Implementation Statement ('CRIS').

## Aboriginal and Torres Strait Islander corporations

### Appointing a special administrator or small business restructuring practitioner

Acknowledging that the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* is a special measure with an express purpose, it is critical that extensive consultation is undertaken with affected parties to ascertain if access to the corporate insolvency reforms is sought and would be beneficial.

In consideration of the above, we support Option one, that a special administrator can choose to, or not to, continue with a restructuring plan (paragraph 2.12). We consider the best outcome for a corporation is for the special administrator and RP to work together to both minimise the cost to the business and harness the expertise of each practitioner. Allowing a restructure to progress in tandem with special administration will provide the best opportunity for a business to remain viable.

However, we do not support automatic termination of a restructuring plan on appointment of a special administrator (paragraph 2.13). Automatic termination would remove restructuring or a simplified liquidation as an option for a corporation for 7 years, being the prescribed period under which a company, or a director of a company, has not been under restructuring prior to entering a restructure.

Further, it is not reasonable to terminate a process without any consideration of the impact of that process. In the case of managing a corporation, it would appear to benefit the role of a special administrator to harness the knowledge already gained by a RP.

# Conclusion

We support the necessary consequential amendments to the various Acts noted to support the corporate insolvency reforms. We caution against changes to the role of the restructuring practitioner before the reforms have had time to be tested and seek that any, and all, amendments adopted do not increase the cost of regulation for our members.

If you have any questions about our submission, please contact Karen McWilliams (CA ANZ) at karen.mcwilliams@charteredaccountantsanz.com or Kristen Beadle (CPA Australia) at Kristen.beadle@cpaaustralia.com.au

Yours sincerely

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