

<b>List of the questions raised for discussion by the Attorney-General's Department and the Department of Treasury in June 2011 <i>"Options paper: a modernisation and harmonisation of the regulatory framework applying to insolvency practitioners in Australia"</i></b>	
<b>QUESTIONS</b>	<b>MY COMMENTS</b>
<b>Standards for entry into the insolvency profession</b>	
<b>Discussion questions</b>	
<ul style="list-style-type: none"> <li>Are there any concerns with changing the academic requirements to remove the greater emphasis placed upon accounting skills over legal skills, while retaining a minimum level of study in each?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> <li>1. The current emphasis in the academic requirements of liquidators is not on "accounting skills" but on accounting studies. Such studies teach important aspects of business activity, including budgeting, economics, business management, break-even analysis, financial ratios, business finance, costing methods, stock control, valuations, auditing, and taxes.</li> <li>2. A liquidator or other external administrator is likely to require a solid understanding in these aspects of business, particularly in trade-on situations.</li> <li>3. The present system, under which lawyers provide legal advice to liquidators as required, works well. It brings fresh, independent, expert minds to bear when needed, which enhances the integrity of external administration regimes. Would a liquidator whose professional qualification is that of a lawyer seek advice from another lawyer and give it the same status?</li> </ul>
<ul style="list-style-type: none"> <li>Should the gaining of a Masters in Business Administration meet the qualification requirements for registration, if it did not otherwise meet legal and accounting study requirements?</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>

<ul style="list-style-type: none"> <li>Should a minimum level of actual experience in insolvency administration remain a mandatory requirement for registration as a practitioner?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>Should the experience requirements for registered liquidators be reduced to two years of full-time experience in five years?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>Should new market entrants be required to complete some form of insolvency specific education before practicing as registered liquidators or registered trustees?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>Should ASIC be empowered to impose requirements on a registered liquidator as a condition of the registration? What types of conditions should a regulator be empowered to impose upon a new registered liquidator's registration?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should a registered trustee face more streamlined entry requirements than those that exist for a standard applicant for registration as a registered liquidator, and vice versa?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Is further formal training necessary to ensure that practitioners that wish to transition between the two professions are able to fulfil their statutory obligations?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<p><b>Registration process for insolvency practitioners</b></p>	
<p><b>Discussion questions</b></p>	
<ul style="list-style-type: none"> <li>Should an applicant seeking registration as a registered liquidator or registered trustee be required to be interviewed as part of the registration process?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>Should an applicant seeking registration as a registered liquidator or registered trustee be required to sit an exam as part of the registration process?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>Should a general 'fit and proper' person requirement be imposed for the registration of both personal and corporate insolvency practitioners?</li> </ul>	<ul style="list-style-type: none"> <li>Yes. Assuming that "fit and proper" refers to the person's moral and mental qualities.</li> </ul>
<ul style="list-style-type: none"> <li>If the process for the registration of liquidators is aligned with the process for the registration of registered trustees, what differences should be maintained between the two registration processes?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>

<ul style="list-style-type: none"> <li>Is it appropriate that the current fee for registration of liquidators be increased to reflect the amendments to registration processes?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should the official liquidator role be maintained?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>What other aspects of the current Bankruptcy Act committee system might be amended?</li> </ul>	<ul style="list-style-type: none"> <li>I have no developed opinion.</li> </ul>
<ul style="list-style-type: none"> <li>If registration of a registered liquidator is for a defined period, what conditions should be required to be met for renewal of the registration to occur?</li> </ul>	<ul style="list-style-type: none"> <li>1. That the liquidator has up-to-date knowledge of:                         <ul style="list-style-type: none"> <li>current practices, principles, standards and laws in the field of corporate insolvency administration; and</li> <li>current laws relating to employment, business practices and business taxes.</li> </ul> </li> <li>2. That the liquidator is still a “fit and proper person”</li> <li>3. That the person has not been found guilty of negligence, breach of duty, theft, fraud, etc., by a court or a recognized disciplinary authority.</li> </ul>
<ul style="list-style-type: none"> <li>Should the renewal process include a fee? Should the fee be commensurate merely with the administrative cost for completing the renewal or should the revenue raised by the fee be used to fund additional oversight of the insolvency market? Should the renewal fee be determined with reference to the numbers and nature of the administrations to which the practitioner is appointed?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<p><b>Remuneration framework for insolvency practitioners</b></p>	
<p style="text-align: center;"><b>Integrity of the fee setting process</b></p> <p>MY COMMENTS:</p> <p>When the Options Paper refers to “clients” (para 162) it says that this term is used to refer to</p>	

“creditors and/or members, depending upon the nature of the relevant insolvency administration”. This seems to me to be a huge oversimplification which hides some important elements present in many insolvency administrations.

In a voluntary corporate insolvency appointment the liquidator or administrator appointed at the first instance is engaged by the directors. So, especially in the case of small enterprises, the liquidator or administrator will tend to think of the **directors** or, perhaps **the directors’ accountant or lawyer**, as his/her client. The insolvency practitioner has been approached by the directors (directly or indirectly) to assist with a problem that they have.

In such a case the liquidator’s fee is likely to be set by the directors or their advisers. For example, the company’s lawyer or public accountant will contact two or more insolvency practitioners and ask them for advice on what to do and a “quote” on a fee – essentially a “fixed” fee - to carry out the work.

The competition that keeps down insolvency administration fees occurs at this point. It is in fact a tender process. The winner, once appointed, then has the task of convincing those who have the power to approve or cut the fee (the creditors) that the fee is reasonable. In this scenario, that tends to be the nature of the insolvency practitioners relationship with creditors.

Often overlooked in discussions about the fee setting process in insolvency administration is the downside of competition. Although a tender process keeps fees down, what is the cost to the integrity of our insolvency laws? An analogy of sorts exists in the building industry, where fierce competition has encouraged quotes that are only achievable by the use of fake contracting agreements (to reduce employment costs), the fraudulent retention of tax monies, and the use of phoenix companies. In the insolvency industry the push for cheap fees is likely to encourage tasks being cut, and the easiest tasks to cut are those to do with the investigation and reporting of offences and misconduct.

Inquiries and discussions about fees (including the discussion in the Options Paper) usually overlook the fact that our laws and our regulators charge and entrust liquidators with being part of the white-collar police force. The amount of work liquidators are expected to carry out in this area – in investigations, collecting evidence, reporting and prosecution support – is considerable. If liquidators do not meet this obligation, the insolvency laws are not enforced. Through regulatory guides and the like the ASIC has almost “privatized” the enforcement of insolvency laws. And, where the liquidator does this work, creditors often pay for it.

“Justice” has become another important client for the liquidator to consider. Lower liquidation fees could be achieved, and justice might be better served, if a much greater part of this function was handed back to the ASIC or given to another government-funded police force.

<b>Discussion questions</b>	
<ul style="list-style-type: none"> <li>Should the Corporations Act be amended to include a provision that aligns with the Bankruptcy Act prohibition upon</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>

<p>practitioners making any arrangement whereby a benefit is received, either directly or indirectly, in addition to the remuneration to which he or she is entitled? Should such a prohibition be clarified to provide that this extends to charging disbursements with a profit component that may benefit, directly or indirectly, the practitioner?</p>	
<ul style="list-style-type: none"> <li>• Are the current requirements for the provision of information to creditors to assist them in assessing costs appropriate? Should this information be provided in a standard form? Should these requirements be aligned between corporate and personal insolvency?</li> </ul>	<ul style="list-style-type: none"> <li>• No.</li> <li>• Yes.</li> <li>• As much as makes sense.</li> </ul>
<ul style="list-style-type: none"> <li>• What could be done to address concerns about cross subsidisation?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• What could be done to address concerns about inappropriate use of disbursements?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• Should all fee approval be required to be subject to a cap set by creditors in an external administration or bankruptcy? Is it unreasonable to expect that an insolvency practitioner go back to the creditors in order to seek an increase on the initial remuneration cap?</li> </ul>	<ul style="list-style-type: none"> <li>• Yes.</li> <li>• No.</li> </ul>
<ul style="list-style-type: none"> <li>• Should a group of creditors (or a single creditor) that successfully challenge an insolvency practitioners' remuneration, receive an increased priority in relation to the savings that may result?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• Should a registered liquidator, under any circumstances, be able to exercise a casting vote on a motion regarding his or her remuneration or removal?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<p><b>Communication and monitoring</b></p>	
<p><b>Discussion questions</b></p>	
<ul style="list-style-type: none"> <li>• What amendments should be made to provide creditors with more information or power to monitor the progress of a winding up, administration or bankruptcy?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• Should creditors have largely the same rights to information and tools to monitor a</li> </ul>	<ul style="list-style-type: none"> <li>• Yes.</li> </ul>

<p>liquidation, administration, bankruptcy or controlling trusteeship?</p>	
<ul style="list-style-type: none"> <li>• Are there any impediments to insolvency practitioners communicating with creditors electronically?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• If the statutory frameworks are aligned, are there any modifications necessary to account for the practical differences between the bankruptcy and corporate insolvency frameworks?</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. Obviously there is a huge difference between a non-business bankruptcy and a large corporate external administration. Beyond that I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• Would support from at least 25 per cent of creditors be an appropriate threshold in corporate insolvency for requiring a creditors meeting to be held? Given the larger numbers and quantum of claims, would a lower threshold (for example, 10 per cent) be more appropriate? What rules should apply in relation to who bears the costs of holding a meeting of creditors?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• If liquidators are required to provide all information reasonably requested by a creditor regarding a liquidation or administration and creditors have improved powers to require the calling of meetings, is there any need for default annual meetings, written updates or creditors' meetings at the completion of a winding-up? Could these requirements be amended to a requirement for the practitioner to raise the option of having such updates and meetings with creditors (for consideration and voting) as a default reporting arrangement?</li> </ul>	<ul style="list-style-type: none"> <li>• Yes. Creditors should not have to ask for information. They should have a right to receive it, and external administrators should have a legal duty to provide it. Creditors must be informed about meetings that are being held.</li> <li>• No.</li> </ul>
<ul style="list-style-type: none"> <li>• Should the role of the COI be given greater prominence in the corporate and personal insolvency systems? If so, how might this occur?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• Should the rules governing COIs be aligned between corporate and personal insolvency? Are there any specific aspects of COI law that should be otherwise reformed?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• Should creditors be able to make a binding resolution on a liquidator? If yes, should there be any role for the Court to overrule</li> </ul>	<ul style="list-style-type: none"> <li>• Yes.</li> <li>• Yes.</li> <li>• Yes. Commercial decisions that</li> </ul>

<p>that resolution (for example, where the Court believes that the resolution is not in the best interests of the creditors as a whole)? Should there be any limit on the type of areas that creditors are able to pass a binding resolution?</p>	<p>have traditionally been the province of liquidators should remain so.</p>
<p><b>Funds handling and record keeping</b></p>	
<p><b>Discussion questions</b></p>	
<ul style="list-style-type: none"> <li>Should the rules governing record keeping, accounting, audits and funds handling in corporate and personal insolvency be aligned? If so, how should this occur?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time..</li> </ul>
<ul style="list-style-type: none"> <li>If aligned rules on accounts reporting are introduced, what should be the content, form and frequency of the accounts required?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Are there other record keeping, accounting, audits and funds handling rules that should be mandated for personal and corporate insolvency, in addition to those that currently exist?</li> </ul>	<ul style="list-style-type: none"> <li>Yes. I believe that the current law which allows liquidators in a creditors voluntary liquidation to destroy their own records of a liquidation soon after the winding up is finalized ought to be repealed. Sec 542(1) contains the phrase “all books of the company <b>and of the liquidator</b>”. The reference to the books of the liquidator should be removed. For more comments see <a href="http://insolvencyresources.com.au/blog/2010/05/24/retaining-books-and-records-post-liquidation/">http://insolvencyresources.com.au/blog/2010/05/24/retaining-books-and-records-post-liquidation/</a></li> </ul>
<ul style="list-style-type: none"> <li>If amendments are made to the personal and corporate law to align the powers of the regulators (in certain circumstances) to freeze the accounts of insolvency practitioners, in what circumstances should the regulators be able to issue an account freezing notice to a bank?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should the issuing of an account freezing notice require an application to the Courts? For how long should a freezing notice have effect?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>At what level should the penalties that</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am</li> </ul>

<p>apply to breaches of the funds handling, record keeping, retention of books, and audit provisions in the Corporations Act and the Bankruptcy Act be set to provide a greater deterrent to potential offenders?</p>	<p>unable to comment at this time.</p>
<ul style="list-style-type: none"> <li>• Will increasing the penalties make practitioners more likely to pay greater attention to these requirements?</li> </ul>	<ul style="list-style-type: none"> <li>• Yes.</li> </ul>
<ul style="list-style-type: none"> <li>• Are there additional civil obligations and criminal offences that should be provided for in respect of these areas?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• If civil or criminal penalties are applied for the lodgement of inaccurate annual reports, under what circumstances should those penalties apply?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• Should late lodgement, non-lodgement or false lodgement of accounts be a statutory basis for removal? If so, by what process might removal take place?</li> </ul>	<ul style="list-style-type: none"> <li>• Allowance should be made for the occasional late lodgement and non-lodgement. Habitual late lodgement and non-lodgement should be a basis for removal.</li> </ul>
<p><b>Insurance requirements for insolvency practitioners</b></p>	
<p><b>Discussion questions</b></p>	
<ul style="list-style-type: none"> <li>• Is there a benefit for insolvency practitioners, creditors or other stakeholders in aligning the insurance requirements for liquidators and registered trustees?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• If the criminal penalty for not complying with insurance requirements is increased, at what level should the penalty be set to provide a sufficient deterrence against breach?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• Should a fidelity fund be established? If so, how should such a fund be operated and funded?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• What other reforms might be put in place regarding insurance requirements?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time..</li> </ul>
<p><b>Discipline and deregistration of insolvency practitioners</b></p>	
<p><b>Discussion questions</b></p>	
<ul style="list-style-type: none"> <li>• Are there any reforms that should be made</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am</li> </ul>



to either the Committee's or the CALDB's systems of disciplining practitioners to improve their operation?	unable to comment at this time.
<ul style="list-style-type: none"> <li>Do you think that aligning the disciplinary frameworks will provide for more consistent and improved outcomes for practitioners and other stakeholders between personal and corporate insolvency?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>If a Committee structure is adopted for registered liquidators:</li> </ul>	
<ul style="list-style-type: none"> <li>Should there be any amendments to the framework that underpins the current personal insolvency committee system?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should the statutory framework for the committee system currently in the Bankruptcy Act be replicated in the Corporations legislation?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should ASIC be statutorily required to provide a show-cause notice to the practitioner before establishing a committee?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should the committee consist of a member of ASIC, a member of the IPA, and an appointee of the Minister?</li> </ul>	It should also include a "public advocate" representative.
<ul style="list-style-type: none"> <li>Should there be a time limit for decisions by the committee? Should it be aligned with the current time limit for bankruptcy?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>If a Committee structure is not adopted for registered liquidators, what specific reform options should be adopted under either the CALDB or Committee regimes? In particular:</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should a statutory timeframe be introduced for decisions by the CALDB?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Are there any powers that the CALDB currently has that should equally be conferred upon a Committee under the Bankruptcy Act or vice versa?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>What, if any, other reforms should be made in respect of the transparency of Board and Committee hearings and</li> </ul>	<ul style="list-style-type: none"> <li>There should be a "public advocate" representative.</li> </ul>

decisions?	
<ul style="list-style-type: none"> <li>Should a committee constituted under the Bankruptcy Act be empowered to summon a third party to appear at a hearing to give evidence and be cross examined?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>Should mechanisms be put in place to impose sanctions on practitioners or witnesses who fail to attend or provide books to a Committee or Board?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>Should the Bankruptcy Act be amended to provide ITSA with the express power to seek to deregister a registered trustee where the trustee is no longer 'fit and proper'?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>If the regulatory frameworks are amended to expand the powers of ASIC and ITSA to discipline insolvency practitioners directly, what minor breaches should those powers extend to?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Would the suggested amendments to enhance the powers of the court breach considerations of natural justice?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should the nature of the role of registered liquidators and registered trustees as officers of the court, as well as their inherent fiduciary duties, mean that it is reasonable to empower the Court to direct them to stand aside where there are serious allegations that have yet to be resolved?</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>
<b>Removal and replacement of insolvency practitioners</b>	
<b>Discussion questions</b>	
<ul style="list-style-type: none"> <li>Should an initial creditors' meeting in a compulsory winding up at which creditors would have the right to replace or appoint a new liquidator be mandated?</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>
<ul style="list-style-type: none"> <li>If an initial creditors' meeting were mandated for court-ordered windings up:             <ul style="list-style-type: none"> <li>Should there be an exception for assetless administrations?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should approval of the appointed registered liquidator be able to be obtained through a mail out? If confirmation/replacement of</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>

<p>registered liquidations occurred by postal vote in court ordered liquidations, should this mechanism also replace the opportunity to replace a practitioner provided via initial meetings in other kinds of corporate insolvency?</p>	
<ul style="list-style-type: none"> <li>Should creditors in corporate insolvencies be generally empowered to remove a registered liquidator by resolution in the same way as under personal insolvency law?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>What effect, if any, would the potential for removal be expected to have on remuneration arrangements?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Does the current scheme for the removal of a registered trustee provided sufficient and clear protections against abuses of process?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>If creditors are empowered to remove a liquidator in a creditors' voluntary winding up (subsequent to the first meeting), should members have any corresponding right in a members' voluntary winding up?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Is there a need to facilitate the transfer of the books of the administration from an outgoing insolvency practitioner to his or her replacement? What barriers, if any, are there to the implementation of such a reform?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Are any other amendments necessary to assist creditors to use any new power to remove a registered liquidator? What other administrative arrangements would be required to ensure a smooth transition from one registered liquidator to another?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<p><b>Regulator powers</b></p>	
<p><b>Discussion questions</b></p>	
<ul style="list-style-type: none"> <li>Are there unjustified divergences between the powers and roles of the insolvency regulators?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should a creditor in a corporate insolvency have any right to request that ASIC undertake a review of specified kinds of decision by a liquidator?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>

<ul style="list-style-type: none"> <li>If ASIC was to be empowered, what types of decisions should ASIC be able to review?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>The expansion of ASIC's current functions to include such a review power would have some cost. Given the Government's cost recovery policy how should any expansion of powers be funded?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should ASIC and ITSA be given more flexibility to communicate to a complainant (or creditors generally) information obtained by it in relation to the conduct of an external administration?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>Should regulators be able to require a practitioner to sit an examination to test ongoing compliance with the knowledge or skills requirements for registration? Should such a power be extended to enabling regulators to require persons acting under delegation from practitioners to sit an examination?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> <li>Yes.</li> </ul>
<ul style="list-style-type: none"> <li>What powers might be appropriate to provide to regulators to facilitate (if necessary) the rights of creditors to call meetings and to ensure such meetings are held in a transparent manner — in particular in relation to the assessment of votes for and against the retention of the current insolvency practitioner?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Does section 536 of the Corporations Act, as currently applied by the Court, provide for the appropriate supervision of registered liquidators by ASIC?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should ASIC be able to share information with the IPA for disciplinary purposes?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should ITSA and ASIC be empowered to impose conditions across the market? If so, what types of conditions should the regulator be empowered to impose?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>If a new Ombudsman or external dispute resolution scheme were established:</li> </ul>	
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>Should the new body be a statutory body (for example, the Superannuation Complaints Tribunal) or a private body (for example, the Financial Ombudsman</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>

Service)?	
<ul style="list-style-type: none"> <li>○ Should any new body have the ability to hear disputes in both corporate and personal insolvency? Should the new entity be independent of the two regulators?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>○ If the body is a statutory entity, what functions of ITSA or ASIC should be given to the new body? Should the body have power to obtain information or to inspect the records of an organisation relevant to the complaint? If the new body is privately run, what protections would need to be put in place to achieve this?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>○ How should the new body be funded? Should there be any charge to the complainant to investigate a complaint or should it be funded through an industry levy?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>○ Should the body have an explicit educative role?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>○ Should the body have the right to deal with systemic issues or commence its own investigation? If the body is a private entity, what powers should it be given to achieve those objectives?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>○ What types of disputes should the body be able to hear and deal with? Should the body be able to review remuneration? Should this be done through independent cost assessors?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<p><b>Specific issues for small business</b></p>	
<p><b>Discussion questions</b></p>	
<ul style="list-style-type: none"> <li>• Are any statutory reforms required to assist regulators to provide improved regulation in relation to interconnected personal and corporate insolvencies? Are improvements needed in relation to their capacity to share information and cooperate?</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>• If the scope of the AA Fund is broadened to allow for the funding of registered trustees</li> </ul>	<ul style="list-style-type: none"> <li>• Due to time constraints I am</li> </ul>

to investigate and report on corporate law breaches, which Corporations Act breaches in particular should be provided for?	unable to comment at this time.
<ul style="list-style-type: none"> <li>Should the scope of the AA Fund be broadened to allow for loans to registered liquidators to properly carry out their fiduciary and statutory duties?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should section 305 of the Bankruptcy Act also be expanded to provide for the funding of investigations into corporate law breaches?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>What steps might be taken to improve efficiency in relation to related personal and corporate insolvencies while appropriately addressing conflicts of interest?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>What other amendments can be made to assist creditors and directors of small corporates to better engage with the corporate insolvency system?</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>
<ul style="list-style-type: none"> <li>Is there a case for automatic disqualification of directors after a company failure? If so, how many repeated failures should trigger disqualification? Should there be a threshold for failures to trigger disqualification (for example, where less than 50 cents in a dollar are returned to creditors)? Over what period must the failures occur?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> <li>Two.</li> <li>Due to time constraints I am unable to comment at this time.</li> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should a registered liquidator be able to assign actions which vest personally in the liquidator? If so, should a registered trustee be likewise able to assign rights of action?</li> </ul>	<ul style="list-style-type: none"> <li>Due to time constraints I am unable to comment at this time.</li> </ul>
<ul style="list-style-type: none"> <li>Should ASIC be able to automatically disqualify a director of an insolvent company who has not taken reasonable steps to ensure that the company has maintained its financial records?</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>