30 January 2020

Australian Law Reform Commission
Level 4
Commonwealth Law Court Building
119 North Quay
Brisbane QLD 4003

By upload and email: corporatecrime@alrc.gov.au

Dear Commissioners

Australia's corporate criminal responsibility regime
Discussion Paper 87

Thank you for the opportunity to respond to the proposals and questions raised in the Australian Law Reform Commission's (ALRC) Discussion Paper on Corporate Criminal Responsibility (Discussion Paper).

ARITA - Australian Restructuring Insolvency and Turnaround Association - makes this submission in response to the specific proposals and questions contained in Chapter 11 of the Discussion Paper concerning "Illegal Phoenix Activity". More information about ARITA is provided at the end of this letter.

General comments

Illegal phoenix activity has a significant cost to the Australian economy but addressing the challenges posed by this behaviour is not a simple process. The responses to the scourge of illegal phoenix activity need to be coordinated, comprehensive and multi-faceted.

A number of the proposals for reform detailed in the Discussion Paper should assist, but other specific actions will also play an important role in addressing the problem of illegal phoenix activity. Most important of these, in ARITA's view, is to address unregulated pre-insolvency advisors.

Nine key points

There are a number of key "puzzle pieces" which, in ARITA's view, will assist with addressing illegal phoenix activity. These are:

1. Simplification of existing offences concerning books and records and ROCAP.
2. The Creditor-Defeating Disposition (anti-phoenixing) offence.
3. Enforcement action against directors and pre-insolvency advisors.
4. Deterrent Penalties.
5. Director Identification Numbers.
6. Free access to business data on ASIC registers.
7. Plain English education for community and directors on insolvency and financial distress.
8. Use of technology and social media to support community education.
9. Licensing requirements for pre-insolvency advisors.

Summary of ARITA responses to Proposals

We provide the following responses to the Proposals and Questions contained in the Discussion Paper:

- **Proposal 21** – ARITA's primary position is that strengthening and proper enforcement of existing provisions within the *Corporations Act 2001* (Cth) (Corporations Act) was preferable to creating quasi-duplicate voidable transaction provisions, however, there are also benefits to a specific offence focused on illegal phoenix activity.

  ARITA supports either the ALRC's proposed amendments to correct the significant concerns over the Constitutional validity of the current drafting of parts of the Bill or a redrafting to more closely align with the proven operation of s 139ZQ of the *Bankruptcy Act 1966* (Cth) (Bankruptcy Act).

  However, ARITA strongly opposes any amendments for the benefits of any creditor-defeating disposition to be disgorged in favour of the Commonwealth and recoveries from a creditor-defeating disposition should be returned to the original company, under the control of its liquidator, for distribution to creditors.

- **Proposal 22** – ARITA considers that such an amendment may be appropriate in theory but there are concerns about how it would operate effectively in practice. We prefer alignment with the existing provisions in the Bankruptcy Act.

- **Proposal 23** – As an original proponent of the concept, ARITA strongly supports the implementation of a Director Identification Number regime.

- **Question J** – ARITA does not support the inclusion of further express powers to disqualify insolvency practitioners.

The existing provisions of the Corporations Act and Bankruptcy Act, along with the ARITA Code of Professional Practice (which applies to ARITA professional members) cover the concerns expressed in the Discussion Paper.

- **Question K** – ARITA's strong view is that the most pressing area for response to reduce and prevent illegal phoenix activity is to address unregulated pre-insolvency advisors.

Please contact John Winter [redacted] or ARITA's Legal Director, Natasha McHattan [redacted] if you would like any further information or assistance concerning this submission.

Yours sincerely,

[redacted]

John Winter
Chief Executive Officer

About ARITA

ARITA – Australian Restructuring Insolvency & Turnaround Association represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,300 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Some 82% of Registered Liquidators and 87% of Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2018, ARITA delivered 183 professional development sessions to nearly 6,000 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members' needs, knowledge and experience. We represented the profession at over 20 inquiries, hearings and public policy consultations during 2018.

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1 Challenges of illegal phoenixing

1.1 Significant costs of illegal phoenix activity in Australia

The significant costs to the Australian economy from illegal phoenix activity have been well researched and widely reported.[1] As noted in the Discussion Paper (at [11.1]) the costs of illegal phoenix activity on Australian businesses, employees and government ranges between $2.85 to $5.13 billion. The significance of these costs is an apparent key driver of the governmental response to create the Inter-Agency Phoenix Taskforce, led by the Australian Taxation Office (ATO). It also makes illegal phoenixing one of the most significant forms of white-collar crime in Australia.

Identifying illegal phoenix activity can prove challenging in some respects, particularly as some activities prevalent in illegal phoenix activity can appear similar to steps and measures taken in a lawful and appropriate corporate restructure or turnaround. These points have been well explored by Professor Helen Anderson[2] in her research work.

However, in the majority of cases, illegal phoenix activity refers to a practice where a company is deliberately placed into liquidation with the intention of avoiding the payment of the company's creditors and the business is then continued through another corporate entity. This type of activity generally becomes clear to liquidators when they are properly resourced to conduct investigations into the nature and reasons for the failure of a company in liquidation.

Registered liquidators, given their statutory investigatory obligations under the Corporations Act, play the lead role in the identification, reporting and pursuit of illegal phoenix activity. This makes liquidators, and the efficient and effective operation of Australia's insolvency laws, a fundamental part of the platform in addressing the costs and challenges of illegal phoenix activity in Australia.

1.2 Key points

Addressing the challenges posed to the economy by illegal phoenixing is not a simple process. The response to the scourge of illegal phoenix activity needs to be coordinated, comprehensive and multi-faceted.

A number of these components are reflected in the recommendations contained in the ALRC Discussion Paper, in particular, the key proposal (summarised at 1.59 to 1.61) concerning the recalibration of the regulation of unlawful conduct by corporations to better reflect the need for criminal regulation of corporations to adequately condemn criminal behaviour.

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[1] "The Economic Impacts of Potential Illegal Phoenix Activity" PwC, July 2018
[2] Melbourne Law School, University of Melbourne

1.2.1 Summary of key points

The key components in a wholistic approach to combatting illegal phoenixing are summarised in the below rubric.

Simplify existing offences concerning books & records and ROCAP[3]	**Creditor Defeating Disposition (anti-phoenixing) offence**	**Plain English Education for community and directors**
Deterrent Penalties	**Enforcement action against directors and pre-insolvency advisors**	**Use of technology and social media to support education (SEO)**
Director Identification Numbers	**Free access to business data on ASIC registers**	**Licensing requirements for pre-insolvency & safe harbor advisors**

1.2.2 Overview of key points

These points form part of the key "puzzle pieces" which, in ARITA's view, are all required to address illegal phoenix activity.

ARITA has consistently supported these measures across its advocacy and submissions to various government inquiries and on legislative amendments. ARITA supports:

- *Director Identification Numbers*
  The creation of a Director Identification Number (DIN) regime to facilitate the identification of directors and the tracking and monitoring of directors' activities. ARITA was one of the original advocates of Professor Helen Anderson's work in this space.

- *Free access to business data*
  Free access to business data on ASIC's databases, and especially free access for registered liquidators and registered trustees. At a minimum, providing free access to liquidators and trustees will support them in carrying out their statutory duties to investigate reasons for insolvency and alleged misconduct.

[3] Current ss 475(9), 530A, 530B Corporations Act

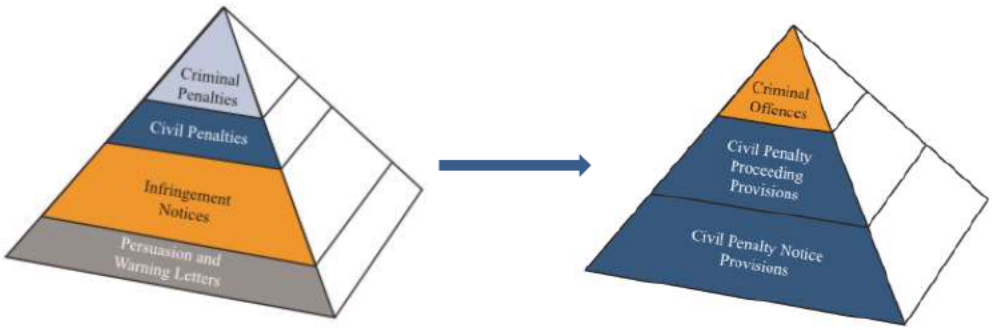
- *Plain English guides and education*
  The provision of a plain language fact sheets outlining the various types of external administration and the role of directors and owners in each. ARITA commenced work on these guides some months ago and is currently seeking financial support from the Federal Government to expedite the project.

- *Licensing pre-insolvency advisors*
  The licensing of pre-insolvency advisors who are effectively providing legal, taxation, financial and accounting advice outside of the established regulatory regimes. Further information on the challenges posed by these unregulated advisors is provided below.

  The use of community education around unregulated pre-insolvency advisors and their potential dangers is also an important part of combatting the problem. Plain English guides and community education, along with the use of technology and search engine optimisation to ensure quality and reliable information is most readily accessible, will also assist.

- *Appropriate offences and adequate enforcement for illegal phoenix activity*
  The use of appropriate offence provisions and active enforcement to address illegal phoenix activity is a key factor in combatting and deterring the practice.

  A simplification of the offence provisions which apply in the context of insolvencies (failure to provide books and records, complete the Report on Company Activities and Property (ROCAP) and to assist the liquidator) to Civil Penalty Notices, if balanced by appropriate penalties (civil and criminal) and an active regulator which will pursue enforcement of the most serious offending conduct is a crucial component. The simplification of regulation and enforcement mechanism is strongly supported by ARITA and reflects the ALRC's proposal for a more principled distinction between civil and criminal regulation of corporate activity (as illustrated below).



Extracted from Figure 4.1 and Figure 4.2 Discussion Paper

1.3 Unregulated 'pre-insolvency advisors'

One of the key challenges to address in combatting illegal phoenix activity is the role of "pre-insolvency" advisors in the practice. Insolvency practitioners are becoming increasingly concerned about the rise of this unregulated 'pre-insolvency' advice market.

Not to be confused with qualified professionals giving lawful advice, unregulated "pre-insolvency advisors" counsel their clients, often small business operators, on how to move assets and avoid paying their debts and meeting their legal obligations. They prey on people and businesses in financial distress. These "advisors" claim to be able to remove the worry of a dire financial situation, but they often encourage unlawful conduct such as hiding or stripping assets, willful destruction of books and records and illegal phoenixing.

These pre-insolvency advisors are not Registered Liquidators or Trustees. They are not lawyers or tax practitioners and do not hold Australian Financial Services Licenses (AFSL). This means they are totally unlicensed and operate without scrutiny from any regulator.

The lack of regulation also means that there is no accountability and no recourse. They are invariably not members of any professional bodies; hold no professional registrations or practicing certificates and therefore do not have any indemnity insurance should things go awry.

Those operating in this space exploit the reality that the regulators are unlikely to chase them. A 2015 ARITA survey found that 78% of liquidators had encountered liquidations where the company had seen a pre-insolvency adviser, however, there have been few prosecutions to date.[4]

Effective enforcement action is needed to shut down pre-insolvency advisors. ARITA believes the advice being offered by pre-insolvency advisors should be considered corporate or personal insolvency advice. Therefore, pre-insolvency advisors should require a license to operate and become subject to the same legal duties as insolvency practitioners or lawyers. An active and multi-faceted community education program is a necessary part of any such licensing regime so the community understands who they are dealing with when seeking advice in times of financial distress.[5]

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[4] ARITA State of the Profession survey and https://asic.gov.au/for-finance-professionals/registered-liquidators/your-ongoing-obligations-as-a-registered-liquidator/liquidator-compliance/registered-liquidator-disciplinary-decisions/

[5] ARITA has made a submission to the Sylvan review into the co-ordination and funding of financial counselling in Australia (March and October 2019) and is producing a range of plain English guides in insolvency. However, additional financial literacy initiatives and funding increased support to financial counsellors and their training will also help to stave off dodgy pre-insolvency advisors.

2 Discussion Paper Proposals & Questions

2.1 Proposal 21

The Treasury Laws Amendment (Combatting Illegal Phoenixing) Bill 2019 should be amended to:

a. provide that only a court may make orders undoing a creditor-defeating disposition by a company, on application by either the liquidator of that company or the Australian Securities and Investments Commission; and
b. provide Australian Securities and Investments Commission with the capacity to apply to a court for an order that any benefits obtained by a person from a creditor-defeating disposition be disgorged to the Commonwealth, rather than to the original company, where there has been no loss to the original company or the original company has been set up to facilitate fraud.

Proposal 21:

ARITA's primary position is that strengthening and proper enforcement of existing provisions within the Corporations Act was preferable to creating quasi-duplicate voidable transaction provisions. It is, however, acknowledged that the fundamental concepts behind the form of the "creditor defeating disposition" amendments contained in the Treasury Laws Amendment (Combatting Illegal Phoenixing) Bill 2019 (Bill) are an improvement on the initial consultation and the addition of a specific phoenixing offence is likely to have benefits.

ARITA supports either the ALRC's proposed amendments to correct the significant concerns over the Constitutional validity of the current drafting of parts of the Bill or a redrafting to more closely align with the proven operation of s 139ZQ.

However, ARITA strongly opposes any amendments for the benefits of any creditor-defeating disposition to be disgorged in favour of the Commonwealth. Any recoveries from a creditor-defeating disposition should be returned to the original company, under the control of its liquidator, for distribution to creditors.

2.1.1 Primary position

ARITA's primary position is that strengthening and proper enforcement of existing provisions within the Corporations Act was preferable to creating quasi-duplicate voidable transaction provisions.

However, the amendments to the Bill did result in some improvements to the initial drafting of the proposed creditor-defeating disposition (CDD) provisions. ARITA was, in particular, pleased to see the incorporation of the term “phoenixing” into the objects contained in the Bill.

2.1.2 Constitutional concerns

The wording of proposed new s 588FGAA in the Bill confers broad administrative powers on ASIC to undo the effect of a CDD. The wording used in the Bill creates concern over the Constitutional validity of the proposed new section.

With the Constitutionality concerns now widely aired, should the proposed s 588FGAA remain in the Bill in an unamended form it is likely that the first time it is used it will be challenged on Constitutional grounds and likely to be struck down. Such an outcome will have a serious detrimental effect on the efficacy of the measures and provisions contained in the Bill.

ARITA acknowledges the need for the concerns to be addressed prior to further progress of the Bill. The concerns may be addressed by either the ALRC proposal or, alternatively, by amending the Bill to more closely align the provision to the drafting of s 139ZQ.

ARITA has strongly supported the introduction of an administrative recovery notice regime into corporate liquidations. There are significant benefits to basing a Corporations Act regime on the existing provision in s 139ZQ Bankruptcy Act, particularly as this model has been held to be Constitutionally valid.[6] It is also a simple and well understood mechanism which aids recovery of money or property which has been transferred as part of a voidable transaction. The mechanism allows for payments to be made to the trustee of the bankrupt estate of an amount equal to the assets or property received as a result of the voidable transaction.

2.1.3 Concerns of requiring disgorgement only to Commonwealth

ARITA strongly opposes any suggested amendment which would result in the recovery of benefits from a CDD transaction being repaid to the Commonwealth over the interests of creditors of an impacted company.

A mechanism which allows ASIC to apply to redirect recovered funds to the benefit of the Commonwealth, particularly in circumstances where the company has been “set up to facilitate fraud” will have the effect of punishing innocent creditors twice. Recoveries in any insolvency should be for the benefit of creditors. Where directors have abused the law through phoenixing, it is clear that community expectations would all the more focus on the protection of innocent creditors.

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[6] See *Re McLernon; Ex parte SWF Hoists & Industrial Equipment Pty Ltd v Prebble* (1995) 58 FCR 391

Alternatively, if there has been “no loss to the original company” it is difficult to see how a CDD transaction could be made out.

Any recoveries of money or property from a CDD should be returned to the original company, under the control of its liquidator, for distribution to creditors. The creditors of the company are the victims of illegal phoenix activity and where recoveries are made for breaches of the CDD provisions in the Bill any such funds must be made available for the payment of dividends to those creditors.

2.2 Proposal 22

The Treasury Laws Amendment (Combatting Illegal Phoenixing) Bill 2019 should be amended to:

a. provide the Australian Securities and Investment Commission and the Australian Taxation Office with a power to issue interim restraining notices in respect of assets held by a company where it has a reasonable suspicion that there has been, or will imminently be, a creditor-defeating disposition;
b. require the Australian Securities and Investment Commission and the Australian Taxation Office to apply to a court within 48 hours for imposition of a continuing restraining order; and
c. grant liberty to company or individuals the subject of a restraining notice to apply immediately for a full de novo review before a court.

Proposal 22:

ARITA considers that such an amendment may be appropriate in theory but there are concerns about how it would operate effectively in practice. We prefer alignment with the existing provisions in the Bankruptcy Act.

2.2.1 Appropriate in theory, uncertain in practice

The provision of an administrative power to ASIC and/or the ATO to issue interim restraining orders against third parties to protect assets against being dissipated or further dissipated by a CDD is, theoretically, a useful power.

However, ARITA notes the following observations which may impact the use of such a power in practice:

(a) The nature of illegal phoenix activity and the fact it is generally uncovered after the event (as a result of investigations by a later appointed liquidator) means that there are factual barriers to ASIC or the ATO having sufficient evidence to support the

reasonable suspicion necessary to justify administrative responses in cases that there "will imminently be" a CDD.

(b) In cases where there is evidence of a CDD, and the restraining orders are sought against a third-party entity then a specific power of ASIC and/or the ATO to take administrative steps to prevent further dispositions may be useful.

(c) In circumstances where a liquidator has access to funding and support from the regulator then a similar application and outcome may be available by an application to the Court for injunctive relief.

2.2.2 Enforcement attitudes of regulators

A further concern held by ARITA is that the current enforcement culture within the regulators, particularly ASIC, does not engender sufficient confidence that there would be an efficient and effective use of such an administrative power, particularly where the suggested timeframe for application to Court for confirmation of such a restraining orders is "within 48 hours".

Information received from registered liquidators strongly suggests that, when ASIC is requested to exercise an enforcement or regulatory power, they generally seek significant levels of information and evidence prior to making any decision or seeking to exercise their discretion. In practice, by the time liquidators are able to investigate and gather sufficient information to satisfy the threshold requirements self-imposed by ASIC before they will act, the offending behaviour has already occurred or the trail of the illegal phoenix activity has run cold.

A key example of this is type of behaviour is illustrated by the approach to applications made by liquidators for access to funding from the Assetless Administration Fund where liquidators are required to make lengthy applications for access to the fund at their own expense.[7]

If such an administrative power is to be used effectively by the regulators there needs to be sufficient investment in the regulators for them to conduct their own investigations and also to work co-operatively and pre-emptively with liquidators to combat illegal phoenix activity early in its lifespan. The granting of such a power to regulators should not be allowed to be used to impose a further investigatory burden on registered liquidators who are already at the frontlines doing around $100 million of unfunded work each year[8].

[7] ASIC administers the Assetless Administration Fund. (See https://asic.gov.au/for-finance-professionals/registered-liquidators/your-ongoing-obligations-as-a-registered-liquidator/assetless-administration-fund/) Regulatory Guide 109: Assetless Administration Fund: funding criteria and guidelines is 169 pages (including appendices).

[8] ARITA "State of the Profession" survey 2017

2.3 Proposal 23

The *Corporations Act 2001* (Cth) should be amended to establish a 'director identification number' register.

Proposal 23:
As an original proponent of the concept, ARITA strongly supports the implementation of a Director Identification Number regime.

As noted in the key points, ARITA strongly supports the implementations of a DIN regime.

The adoption of a DIN has been part of ARITA's policy platform since 2015[9], developing on the platform of the work conducted by Professor Helen Anderson.

The policy was reflected in ARITA's submissions to the Productivity Commission's inquiry into "Business set-up, transfer and closure" and adopted into its final report. Since that time ARITA has consistently supported the introduction of DINs in its policy, including having given evidence at the Senate Economics Legislation Committee hearings into the Commonwealth Registers Bill 2019 (and related bills)[10] and also representing insolvency practitioners on the "Modernising Business Registers Business Advisory Group" which is assisting the ATO with the implementation of the DIN as part of the government's program to modernise Australia's business registers system.[11]

[9] ARITA Policy Positions February 2015
[10] Senate Economics Legislation Committee on the Commonwealth Registers Bill 2019 and four related bills, 13 March 2019
[11] For further information on the Modernising Business Registers Business Advisory Group see https://www.ato.gov.au/General/Consultation/Consultation-groups/Stakeholder-relationship-groups/Modernising-Business-Registers-Business-Advisory-Group/

2.4 Question J

Should there be an express statutory power to disqualify insolvency and restructuring advisers whom are found to have contravened the proposed creditor defeating disposition provisions?

Question J:

ARITA does not support the inclusion of further express powers to disqualify insolvency practitioners.

The existing provisions of the Corporations Act and Bankruptcy Act, along with the ARITA Code of Professional Practice (which applies to ARITA professional members) (Code) cover the concerns expressed in the Discussion Paper.

As previously noted, registered liquidators are at the frontlines in discovering and pursuing illegal phoenix activity. It is through the efforts of the vast majority of registered liquidators that proceedings can be commenced against those who are involved in this conduct.[12] Therefore, registered liquidators should be seen as an integral part of the solution for combatting illegal phoenixing, as opposed to part of the problem.

For those rogue insolvency practitioners who may facilitate or turn a blind eye to illegal phoenix activity there are a number of existing mechanisms in place to ensure that they are expeditiously removed and/or deregistered.[13] Effective enforcement of existing provisions is a more efficient response than the introduction of new and duplicative disqualification provisions. We note that ASIC already has some 12 staff and a budget of over $9 million (funded by registered liquidators) for the oversight of just 650 liquidators and yet ASIC action since the enhancement of regulatory powers in the Insolvency Law Reform Act 2016 has seen only one liquidator removed from practice by ASIC[14].

Further, the introduction of specific disqualification provisions for insolvency practitioners will not address the more pressing challenge of the involvement of unregulated pre-insolvency advisors. Arguably, this will simply move then into the unregulated pre-insolvency advisor cohort.

It is also noted that the Code imposes additional professional obligations on ARITA professional members which assists in ensuring high standards of professional conduct.

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[12] An example of the work done by liquidators to investigate illegal phoenix activity is the investigations conducted into the activities of Philip Whiteman.
[13] See for e.g. s 536 Corporations Act (power to inquire into liquidator's conduct) and s 40-100 Insolvency Practice Schedule (for industry body to give regulator notice of possible grounds for disciplinary action).
[14] https://asic.gov.au/for-finance-professionals/registered-liquidators/your-ongoing-obligations-as-a-registered-liquidator/liquidator-compliance/registered-liquidator-disciplinary-decisions/

2.5 Question K

Are there any other legislative amendments that should be made to combat illegal phoenix activity?

Question K:
It is ARITA's strong view that the single most pressing area for response to reduce and prevent illegal phoenix activity is to address unregulated pre-insolvency advisors.

As noted above, addressing illegal phoenix activity requires a coordinated, multi-faceted and wholistic approach, however, the single most pressing area for focus is to address unregulated pre-insolvency advisors.

Proactive enforcement action against, and reforms and regulations to require licensing of, pre-insolvency advisors are the key areas where immediate steps should be taken to combat illegal phoenix activity.

It is ARITA's view that, just as occurs with anyone who provides financial product advice being required to hold an AFSL, it should be the case that anyone providing insolvency advice should be required to hold a similar license to provide that advice. Registered Liquidators and Trustees clearly meet that requirement and should be deemed to be registered. Lawyers who provide the advice should be required to be able to demonstrate additional education (equivalent to registered liquidators and trustees). A third sub-category of appropriately qualified advisors may be created but would require the same levels of oversight as liquidators and trustees.

3 Additional Comments

ARITA also highlights the following additional matters:

(a) The approach to accessorial liability under s 79 of the Corporations Act; and
(b) The need for a comprehensive review of Australia's personal and corporate insolvency regimes.

3.1.1 Improvements to accessorial liability

ARITA notes the proposals in the Discussion Paper, particularly at Chapter 7 of the Discussion Paper, and supports the general approach advocated by the ALRC for a simplification of the individual accountability regime for corporate conduct.

It is hoped that the overall streamlining and simplification process advocated by the ALRC in the Proposals contained in the Discussion Paper will have flow on effects to the operation and use of s 79 of the Corporation Act against those "involved" in a contravention of the Corporations Act provisions (whether they be civil penalty provisions or criminal offences).

Given the nature of illegal phoenix activity and the manner of operation of pre-insolvency advisors, it is likely that any improvements to the effective and efficient use of s 79 to attribute accessorial liability will have significant positive impacts on reducing the incidence of the behaviours.

3.1.2 Need for comprehensive review of Australia's personal and corporate insolvency law regimes

Australia's insolvency law is amongst the most complex and voluminous in the world. It's fair to say that only our tax laws are more complex. Also, the separation of Australia's personal and corporate insolvency systems is poorly understood, even by many policymakers.

ARITA believes now is the time for a comprehensive review of Australia's insolvency system.

There is an overwhelming need to set some clear and obvious principles that all insolvency law reform must follow. Our insolvency laws must be:

> **SIMPLE** – how do we justify having so much disjointed legislation rather than a single 'Insolvency Act' – as the UK has had for the past 30 years?
>
> **EFFICIENT** – complexity comes at a cost. We need a system that delivers value to creditors and facilitates efficiency for insolvency professionals.
>
> **EFFECTIVE** – substantial failings in the first two principles – simple and efficient – undermine insolvency practitioners' ability to deliver effective outcomes for insolvency stakeholders.

ARITA is prepared to lead and drive this. We have announced that we will be creating a Financial Recovery Law Reform Commission which will be led by eminent commissioners and will aim to create a template for reform that will deliver a world's best practice system. While, as a profession, we will primarily fund this important endeavour, we will be seeking the support of government to assist in properly resourcing it.

The challenges posed by illegal phoenix activity, and the various responses required to address it, are issues which will be covered in a comprehensive and wholistic manner through a root and branch review.

Appendix

ARITA has been a leader in public policy advocacy concerning the challenges posed by illegal phoenix activity and the range of responses required to attempt to address it.

Some of the submissions and publications made by ARITA concerning these issues are summarised below:

- Submission to the ASBFEO Insolvency Practices Inquiry (January 2020)
- Release of "Financial Recovery 2020", ARITA's 8-point plan to strengthen Australia's insolvency regime (August 2019)
- Submission to the Senate Economic References Committee in response to its inquiry into *Credit and financial services targeted at Australians at risk of financial hardship* (November 2018)
- Submissions concerning reforms to strengthen penalties for corporate and financial sector misconduct (October 2018)
- Submissions on draft reforms to combat illegal phoenix activity and related consultation (October 2018, February 2018 and October 2017)
- Submission on modernizing Australia's business registers and the introduction of Director Identification Numbers (August 2018)
- Submissions on draft reforms to address corporate misuse of fair entitlements guarantee scheme and related consultation (July 2018 and June 2017)
- Submission to Productivity Commission inquiry into data availability and use (July 2016)
- Submissions to Productivity Commission concerning their inquiry and report on Business Set-Up, Transfer & Closure (May 2015)
- ARITA Policy Position (February 2015)
- "A Platform for Recovery 2014" – ARITA discussion paper on issues for dealing with corporate financial distress (October 2014)

Copies of these submissions are available upon request.