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Review of Corporate Insolvency Law

Submission to the Ministry of Business, Innovation and Employment by Civil Contractors New Zealand Incorporated ('CCNZ') on recommendations made in Report No. 2 of the Insolvency Working Group ('IWG') relating to voidable transactions, Ponzi schemes and other corporate insolvency matters

Thank you for the opportunity to submit on the recommendations made in Report No.2 by the Insolvency Working Group dated 15 May 2017 ('the **Report**'). Our submission:

- outlines who CCNZ is and our interest in corporate insolvency law (and particularly voidable transactions);
- comments generally on the Report; and
- addresses (where relevant) the questions for submitters on the Report.

CCNZ

CCNZ is the national industry body representing civil and general contractors who carry out the country's civil infrastructure construction and maintenance work. CCNZ estimates that the civil construction sector carries out more than $12 billion of work annually and employs more than 60,000 workers. CCNZ members are active in the transport, infrastructure, communications, energy, agriculture and forestry and building industries, just to name a few.

CCNZ and its predecessor organisations New Zealand Contractors' Federation and Roading New Zealand have represented contractors for over 80 years. CCNZ represents the interests of 600 contractor and associate members. Our members range from large international companies to small family businesses. CCNZ's primary roles are:

a industry advocacy and representation;

b supporting industry development, professionalism and safety; and

c providing information and advice to members.

Voidable transactions and the civil and general contracting industry

As the civil and general contracting sector was not represented on the IWG, CCNZ takes the opportunity to outline the special nature of the industry.

- The insolvency of a principal or head contractor can have a devastating effect on CCNZ's members, who are usually exposed to both potential loss of outstanding payments and retention monies as well as voidable transaction clawbacks.[1]
- There are usually a large number of sub-contractors effected when a principal or head contractor fails.
- The industry is characterised by large cash payments made to and by members. This situation makes members a tempting target for liquidators.
- Payment is usually on account and contractors are usually unsecured creditors at the bottom of the "pecking order".
- Slow payment or part-payment of invoices is symptomatic of the industry. These behaviours are not always indicative of insolvency within the industry.[2]
- It is common to have payments withheld, particularly retentions.
- There can be large swings in claimed amounts because, for example, of quantity remeasure and variations. This aspect can result in payments being made well after work was carried out.
- For many industry members, margins can be small, so cash flow effects can be significant.

Hiway Stabilisers litigation

For several years, CCNZ has taken a keen interest in the voidable transactions regime and the impact that this regime has on its members. In 2014, CCNZ's then chief executive officer wrote:

> *"I'm finding the hardest part of getting this message through is that no one seems able to comprehend that our justice system could produce a result that is so completely at odds with what society believes to be natural justice.*
>
> *Consider a firm or individual that undertakes to expend their resources and energy in carrying out a piece of work for a client in good faith and in the normal course of their business activities – completes it, gets paid a fair price for it, diligently pays their workers and suppliers, and then up to two years later someone knocks on their door to take back the money on the*

[1] CCNZ acknowledges the recent amendments to the Construction Contracts Act 2002 designed to protect retentions, but remains sceptical about how successful this reform will be when it comes to recovering retention monies.
[2] In this respect, refer *Madsen-Ries v Donovan Drainage and Earthmoving* [2016] NZCA 301.

basis of a situation the supplier could not possibly have known about in the first instance. And then the court says that is ok."[3]

One of CCNZ's members, Hiway Stabilisers, was involved as a party in the voidable transactions litigation which went to the Supreme Court and clarified the meaning of 'gave value' in s296(3) of the Companies Act 1993.[4] CCNZ supported Hiway Stabilisers through the litigation and the Supreme Court's decision was well-received by CCNZ and its members. Commenting at the time, CCNZ said "*[t]his decision gives contractors some surety that payments received will not be clawed back.*"[5] Subsequently, CCNZ has acknowledged the Supreme Court's decision as a "victory for common sense."[6]

General comments

CCNZ takes the view that providing certainty to a business that it can rely on the validity of a payment in the normal course of business should be the overriding consideration in a robust and generally accepted voidable transactions regime.

As such, CCNZ strongly supports the reduction in the period of vulnerability for insolvent transactions from two years to six months. CCNZ considers that this amendment, in itself, will cure most of the present ills with the voidable transactions regime. The Supreme Court's decision in *Allied Concrete* is a clear indication that certainty for recipients of payments is a primary policy objective.

CCNZ does not support the repeal of the 'gave value' element of the s296(3) test. If Parliament's policy is to align the New Zealand and Australian positions (a position that was significant to the Supreme Court), repealing 'gave value' after its interpretation by the Supreme Court moves the countries further apart on the substance of the law. CCNZ does not consider that the 'gave value' limb of the test problematic. It is the first two limbs of the s296(3) test that cause creditors (and liquidators) the most cost and expense.

If the Government does decide to repeal the 'gave value' limb of the s296(3) test, then we agree with the IWG that this reform should not be implemented in isolation, as that would swing the pendulum too far in favour of the collective interests of creditors. Implementation of recommendations 1 and 2 must occur simultaneously, if recommendation 1 is to be effected at all.

CCNZ is generally supportive of the other proposed changes to the voidable transactions regime and corporate insolvency law. This submission does not address the Report's commentary on Ponzi schemes, as these scams do not affect our members in their business capacity in the industry.

Questions for Submitters on the Report

Voidable Transactions

Question 1(a): *Do you agree with the Insolvency Working Group's assessment of the impact of the Supreme Court's decision in* Allied Concrete v Meltzer *on New Zealand's voidable transactions regime? (paragraphs 32-34)*

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[3] Jeremy Sole "Liquidator Clawbacks (Voidable transactions) – are the new precedents fair?" *New Zealand SME Business Network Discussion* (LinkedIn) (November 2013).
[4] *Allied Concrete Limited v Meltzer* [2015] NZSC 7.
[5] "Supreme Court overturns 'voidable transactions' ruling" *Stuff.co.nz* (online, 18 February 2015).
[6] Peter Silcock "Civil Contractors New Zealand" *Builders & Contractors* (28 September 2016).

In general, CCNZ agrees with the IWG's assessment of the impact of the *Allied Concrete* decision. The judgment makes it easier for creditors to avail themselves of the s296(3) defence, but it remains the case that all three requirements of the test must be met. If the result of the decision has been to "*...return the regime to one in which unremarkable transactions were immune*",[7] then CCNZ considers that the decision is indeed a victory for common sense.

Question 1(b): *If not, what is your assessment of the impact of the decision?*

Not applicable.

Question 2(a): *Do you agree with the Insolvency Working Group's listed objectives of the voidable transactions regime? (paragraph 53)*

Yes, although CCNZ is sceptical that the equal sharing policy rationale is realised in practice. CCNZ's perception (although it can point to no empirical data) is that recoveries for voidable transactions recoveries are not shared equally among unsecured creditors, but are often absorbed by the fees and costs of liquidation.

Question 2(b): *Should other objectives also be considered?*

No.

Question 2(c): *What weighting should be given to the objectives, e.g. equally or differently?*

CCNZ considers that more weighting should be given to the objective of fairness to individual creditors. This objective aligns with commercial certainty and the need for business trade to be disrupted as little as possible. Security of payment should be paramount and inspires business confidence and trade. Unsecured creditors who have money clawed back from them by liquidators 'lose' in several ways: they are required to give up hard earned payment, they lose time and cost dealing with the claim and they are usually left with an unfulfilled creditor claim in the liquidation and no dividend from the recovery of the preference.

Question 3(a): *Do you agree with the Insolvency Working Group's views on the problems with the status quo? (paragraphs 56-69)*

CCNZ definitely agrees that individual creditors who are not related to the debtor company are subject to excessive business uncertainty due to the two-year period of vulnerability for clawing back voidable transactions. An effects-based test and a two year period of vulnerability are incompatible. CCNZ agrees with the IWG that the "*...risks to commercial confidence under the current law are significant*".[8] Further, CCNZ agrees that it can be particularly harsh if what appears to be a normal, everyday commercial transaction is re-opened long after the event.[9]

CCNZ does not agree that the status quo insufficiently protects the collective interests of creditors. Liquidators can claw back payments made in a two year period prior to liquidation. Even if establishing value under the third limb of the s296(3) test is easier following *Allied Concrete*, the first two limbs of the defence can be difficult to satisfy, given the means available to many creditors and the passage of time between transactions and litigation.

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[7] Paragraph [34] of the Report.
[8] Paragraph [69] of the Report.
[9] Paragraph [69] of the Report, referring to *Allied Concrete* at [1(b)].

CCNZ does not agree that it is the *Allied Concrete* decision that has incentivised creditors to know as little as possible about a debtor's financial position. That perverse incentive was already there before *Allied Concrete* was decided. The need for liquidators to consider or probe creditor knowledge about a debtor's ability to pay its debts has always been an aspect of the regime, although CCNZ accepts that it has been highlighted since the Supreme Court's decision. The renewed emphasis on what creditor knew under the proposed reforms is at odds with the creditors-deterrence theory rejected in the Companies Act.

As an organisation representing creditor interests, CCNZ is less concerned with liquidators needing to carry out a detailed analysis before embarking upon or progressing a voidable transaction claim. CCNZ considers that a high degree of rigour should be applied by liquidators when considering whether to make claims (or whether to continue them, once they have received an opposition from a creditor). Voidable transaction claims have a massive impact on CCNZ's members. CCNZ is concerned about the resource drain on members having to investigate receipt of previous payments, particularly when staff turnover often means that there is little institutional memory of the circumstances surrounding a claim (which is particularly the case if liquidators do not make a claim until several years after they have been appointed).

The concern expressed by Mike Whale that, following *Allied Concrete*, there will be far fewer insolvent transaction recoveries does not trouble CCNZ.[10] It takes this stance because there is little, if any, evidence that the recoveries are being consistently shared with non-preferential unsecured creditors – the very creditors who are meant to benefit from them under the equal sharing principle.

Question 3(b): *Are there other problems?*

We agree with the IWG that the main issue for the voidable transactions regime is balancing the three objectives identified in paragraph [53] of the Report.

Question 4(a): *What are your views on the package of changes recommended by the Insolvency Working Group in Chapter 1?* (recommendations 1 and 2 and paragraphs 72-77)

CCNZ does not support recommendation 1. CCNZ does not consider repealing the gave value component of the test will make a significant difference to the regime. It may, in fact, introduce further uncertainty, which is undesirable given the amount of change in this area of the law in recent years. Repealing gave value would, arguably, take us further away from the Australian position, where the same defence uses the phrase 'valuable consideration'. CCNZ is not convinced that repealing 'gave value' will reduce administration costs for liquidators or creditors in dealing with claims.

CCNZ strongly supports recommendation 2. Reducing the period of vulnerability will significantly improve business confidence in the voidable transaction regime.

Question 4(b): *Do you agree with the Insolvency Working Group that recommendations 1 and 2 need to be implemented as a package? (paragraph 70) If possible, please provide information on the number of voidable transactions that you are aware of that fall within the specified period (but not the restricted period) and the dollar amount of such claims.*

CCNZ does not agree that recommendations 1 and 2 need to be implemented as a package. CCNZ would prefer to see recommendation 2 made into law on its own. However, if the Government is

[10] See paragraph [66] of the Report.

intent on repealing 'gave value', then CCNZ considers that it is absolutely vital that recommendation 2 is implemented at the same time, otherwise completely excessive regard would be given in law to the collective interests of creditors.

CCNZ does not have any data on voidable transactions that fall within the specified period (but not the restricted period).

Question 5: *Are there other feasible options?*

For the reasons discussed above and elsewhere in this submission, CCNZ would prefer to implement recommendation 2 and leave s296(3) as it currently stands.

Other issues relating to voidable transactions and other recoveries

Question 6(a): *What are your views on the other changes to the voidable transaction regime and other recoveries recommended by the Insolvency Working Group in Chapter 2? (recommendations 3-11)*

- *Recommendation 3*: CCNZ considers that it is fair to retain the two year period of vulnerability for clawbacks for unrelated party transactions at undervalue.
- *Recommendation 4*: CCNZ also considers it fair to standardise the period of vulnerability for all clawbacks under ss 292, 293, 297 and 298 at four years, where the debtor and preferred creditor are related parties.
- *Recommendation 5*: CCNZ agrees that the definitions in s245A should also be used for the purposes of ss 298 and 299.
- *Recommendation 6*: CCNZ accepts the presumption of insolvency in the restricted period for claims.
- *Recommendation 7*: CCNZ supports reducing the time limit for liquidators to file clawback claims from six years to three years, although it would have preferred a two year time limit. CCNZ does not agree with the IWG that two years would be too short.[11]
- *Recommendation 8*: CCNZ would only support providing the Court with discretion to extend the filing period on the basis that the liquidators would need to prove that a creditor(s) had obstructed the liquidators from obtaining information.
- *Recommendation 9*: CCNZ supports adding a defence for a creditor with a valid security interest who can demonstrate that there was no preference at the time they received payment.
- *Recommendation 10*: CCNZ supports the simplification of the continuing business relationship rule by removing the subjective element relating to the parties' intentions.
- *Recommendation 11*: CCNZ supports clarification of the starting point of a continuing business relationship.

[11] Paragraph [100] of the Report.

Question 6(b): *Are the recommendations likely to have a material impact on the total amount of funds that liquidators would be able to recover under the voidable transaction for the benefit of creditors and, if so, how?*

Overall, CCNZ does not consider that the recommendations, if implemented, would have a material impact on the funds that liquidators would be able to recover *for the benefit of creditors*. Putting aside its reservations about recommendation 1, CCNZ sees most of the recommendations as bringing consistency and fairness to the law, and imposing welcome disciplines on liquidators when they are considering claims.

Question 6(c): *Do you agree that the limitation period for voidable transaction clawback claims should be reduced from 6 to 3 years? (recommendation 7) How often are voidable transaction claims initiated 3 years after the commencement date of the liquidation?*

CCNZ agrees with recommendation 7 but, as above, would prefer to see the limitation period reduced to two years.

Question 7: *Do you agree with the Insolvency Working Group's view that the recommendations contained in Chapter 2 can be made with or without making the changes recommended in Chapter 1?*

CCNZ agrees with the IWG's view.

Procedural issues

Question 8(a): *What are your views on the procedural changes proposed by the Insolvency Working Group in Chapter 3? (recommendations 12-15)*

CCNZ supports recommendations 12 and 13 and considers them to be helpful. In particular, CCNZ supports liquidators identifying what they see as the date and dollar value of all transactions forming part of the continuing business relationship.

CCNZ refers to paragraphs [130] and [131] of the Report. CCNZ would prefer to see the introduction of a materiality threshold for setting aside transactions. CCNZ does not consider that the administration costs imposed on a liquidator are a sufficient deterrent for some liquidators making small claims. There is merit in a materiality threshold of $10,000 being imposed. Any threshold below $10,000 would not be a sufficient restraint, for if less than $10,000 is recovered, it is likely to be all applied to liquidator fees and costs.

CCNZ refers to paragraphs [132] to [135] of the Report. CCNZ members often take an understandably cynical view of voidable transactions. There is a perception that the only parties who benefit from voidable recoveries are the liquidators and their lawyers.

The Report does not recommend the ring-fencing of the proceeds from voidable transactions and charges. The position appears to be based, in part, on the Australian courts permitting proceeds to be applied towards the liquidators' general costs. The Report states that the law in New Zealand is and should continue to be the same, without explaining why this should be the case.

CCNZ recognises that liquidators should not be out of pocket for their efforts in attempting to enlarge the pool of funds available for distribution to unsecured creditors. It considers, however, that if unsecured creditors are unlikely to be the beneficiaries of a voidable transaction recovery (as is often the case), then liquidators should not bring such actions. This aspect of reform requires further

consideration. CCNZ suggests that, in all cases, at least 50% of gross recoveries should be shared with unsecured creditors. Such a requirement may incentivise liquidators to only pursue cases of significant merit and quantum. CCNZ acknowledges that moves are afoot (following the IWG's first report) to bring more rigour to the regulation of liquidators. CCNZ supports these steps, which should assist with ensuring only meritorious voidable claims are pursued.

Question 8(b): *In regard to recommendation 13 (content of liquidator's notice to set aside transactions) what standard and basic (**additional**) information should a liquidator's notice to creditors under section 294 provide and why? How would the creditor receiving the notice benefit from receiving this additional information and what would be the costs to the liquidator in providing the information?*

CCNZ does not consider any additional further information is required.

Voidable transactions and recoveries generally

Question 9: *Are there any other issues with the voidable transaction and other recoveries regime that are not covered by Chapters 1 to 3 of the Insolvency Working Group's report?*

CCNZ considers that further procedural reforms could also be made to make the voidable transactions regime more efficient:

- Require liquidators, within 20 working days of receiving an opposition from a creditor, to initiate an application in the High Court.
- Impose a materiality threshold of $10,000 (as discussed above).
- Require at least 50% of gross recoveries to be shared with unsecured creditors.

CCNZ is concerned that the knowledge and intentions of creditors should be as important as they are now, given the aim of the current regime was a strict effects-based test. In this respect, CCNZ refers to the concerns outlined in paragraphs [61] and [62] of the Report.

Ponzi schemes

Question 10: *What are your views on the possible changes to the Property Law Act 2007 outlined by the Insolvency Working Group to aid the recovery of funds (adding a Ponzi presumption and a good faith defence)? (recommendation 16(a))*

CCNZ does not express any views on Ponzi schemes in this submission.

Other corporate insolvency issues

Question 11(a): *What are your views on the other corporate insolvency law changes proposed by the Insolvency Working Group in Chapter 5? (recommendations 17-30)*

- *Recommendation 17*: CCNZ agrees with the proposed amendment of the definition of secured creditor.

- *Recommendation 18*: CCNZ agrees that recoveries from reckless trading claims should be for unsecured creditors only.[12]

- *Recommendation 19:* CCNZ agrees that all administrators' reports should be filed with the Registrar of Companies.

- *Recommendation 20:* CCNZ cautiously supports the recommendation providing powers to liquidators to obtain certain information from third parties without having to apply to the courts. CCNZ agrees with the IWG that such a procedure should only allow the liquidator to obtain information that would ordinarily have been available to the liquidator if proper records had been kept by the company in liquidation. There should be no access to information that is otherwise confidential to the third party, such as bank records and internal correspondence between the third party and other parties.

- *Recommendation 21:* For consistency, CCNZ supports the recommendation that the definition of 'telecommunications service' in the Companies and Receivership Acts be replaced with the definition of 'telecommunications service' in the Telecommunications Act 2001.

- *Recommendation 22:* CCNZ agrees that fines and penalties should be provable claims, but that unsecured creditors should be paid ahead of fines and penalties

- *Recommendation 23:* CCNZ supports electronic communication with creditors. CCNZ would prefer to see, as a default, liquidators always publishing information for creditors on their websites.

- *Recommendation 24:* As below, CCNZ supports this recommendation.

- *Recommendation 25:* As below, CCNZ supports this recommendation.

- *Recommendation 26:* As below, CCNZ supports this recommendation.

- *Recommendation 27:* CCNZ agrees that no super-priority should be afforded to PAYE provable in a liquidation beyond that of Schedule 7 of the Companies Act.

- *Recommendation 28:* CCNZ supports the Receiverships Act being amended to clarify that administrators continue to have a priority for their fees and expenses when a company has both receivers and liquidators appointed.

- *Recommendation 29:* CCNZ supports the removal of any circularity of priority in the Receiverships Act.

- *Recommendation 30:* As below, CCNZ supports this recommendation.

Question 11(b): *What are your views on allowing liquidators to obtain, by right, certain information from third parties without having to go to the High Court? (recommendation 20 and page 48) What are the costs involved in seeking an order from the High Court? Does the High Court routinely approve such requests?*

[12] See Michael Arthur "Reckless trading damages" [2013] NZLJ 51.

As above, CCNZ cautiously supports the recommendation providing powers to liquidators to obtain certain information from third parties without having to apply to the courts. CCNZ is concerned about liquidators potentially abusing the reformed powers, so is strongly of the view that there should be no access to information that is otherwise confidential to the third party, such as bank records and internal correspondence between the third party and other parties.

CCNZ is not in a position to comment on the costs involved with seeking an order from the High Court or whether the Court regularly approves requests.

Question 11(c): *Do you agree that it is not clear whether long service leave forms part of Schedule 7 of the Companies Act? (recommendation 24 and page 51) How often does the possible recognition of long service leave as a preferential claim arise?*

CCNZ recognises the scope for ambiguity about the status of long service leave. CCNZ supports the proposed reform (recommendation 24).

Question 11(d): *What are your views on establishing a new preferential claim for gift cards and vouchers? (recommendation 25 and pages 51-52)*

CCNZ is supportive of this proposed reform which protects the interests of vulnerable consumers.

Question 11(e): *What are your views on the recommendation to limit the preference claims of the Commissioner of Inland Revenue and the Collector of Customs to six months prior to the date of the commencement of the liquidation? (recommendation 26 and pages 52-53)*

CCNZ supports this recommendation. The IRD is in a better position than most creditors to identify when a company has become insolvent and to initiate steps for the appointment of liquidators. There is a sense that the IRD takes too long to take action against insolvent companies, but is one of the first creditors to benefit from any realisations.[13]

Question 11(f): *What aggregate information, if any, would be useful for the Registrar of Companies to publish and why would it be useful? (recommendation 30 and page 56)*

CCNZ agrees with the suggestions made in the Report about the collation and publication of information.[14] There is little empirical data about recoveries made by liquidators and it would be useful to have more information about the returns to creditors when assessing the overall effectiveness of the voidable transactions regime.

Question 12(a): *What are your views about the Insolvency Working Group's comments on the corporate restructuring processes in New Zealand? (paragraphs 173-177)*

CCNZ is not aware of any major issues with Parts 14, 15 of 15A of the Companies Act, although voluntary administration remains under-used and poorly understood by many creditors.

Question 12(b): *Does New Zealand's insolvency regime meet the OECD's objectives outlined in paragraph 173?*

CCNZ considers that these objectives are met in part, but not whole. The restructuring of viable firms often comes at high cost and there are aspects of the voluntary administration regime (which was

[13] In this respect, please see *Grant & Khov v Johnston* [2016] NZCA 157 at [94].
[14] Page 56 of the Report.

intended to assist corporate rescue) which see that process continue to be under-utilised in New Zealand. CCNZ perceives that the liquidation of non-viable firms is generally a cost-effective process.

In terms of balancing the interests of parties involved in an insolvency, CCNZ is of the view that the interests and perspective of non-preferential unsecured creditors are often paid little attention. In part, this is because of the priority scheme, but there is also a perception that some insolvency practitioners (and their lawyers) benefit disproportionately from insolvencies, at the expense of non-preferential unsecured creditors.

As to the timely resolution of insolvency, CCNZ is aware that it can take several years for a liquidation to complete and the reasons for delay are not always explicable. As explained above, CCNZ would like to see an obligation placed on liquidators to pursue any voidable transaction claims without undue delay.

Question 12(c): *How important is it for New Zealand's insolvency regime to be aligned with the Australian regime?*

Alignment was important for the Supreme Court in *Allied Concrete*. CCNZ sees no reason, on questions of substance, why New Zealand and Australia's voidable transaction regimes should be any different, particularly since the 2006 reforms sought to align the New Zealand position with that in Australia. CCNZ is surprised that Parliament did not employ the phrase 'valuable consideration' used in s588FG(2) of the Australian Corporations Act 2001 instead of 'gave value' when it amended the s296(3) defence.

This difference in wording gave rise to what, in CCNZ's view, was a series of unfortunate court cases providing conflicting authority on whether the creditor must have given value subsequent to the impugned transaction, or whether value given prior to the impugned transaction was sufficient for the defence.[15] In Australia, providing "valuable consideration" means providing value that is real, substantial and has a commercial quality to it.[16] It does not mean that "full consideration" must be given.[17]

New Zealand court decisions prior to the Supreme Court in *Allied Concrete* were contrary to the Australian interpretation of the defence. Australia has 'valuable consideration' and a six month vulnerability period for transactions. CCNZ asks: why can New Zealand not keep 'gave value' and reduce the vulnerability period to six months? It is unclear to CCNZ, from the Report, to what extent (if at all) the IWG considered recommending an amendment to s296(3) so that it completely aligned with the Australian legislation – which was Parliament's intention in the first place.

Question 13: *Are there any other changes to corporate insolvency law not covered in Report No. 2 that should be made?*

CCNZ is aware of the IWG's first report, published in August 2016. That report recommended co-regulation of insolvency practitioners and CCNZ very much supports that recommendation.

Implications for personal insolvency law

[15] See Paragraphs [11] to [18] of Annex 4 of the Report.
[16] Harris and Murray *Keay's Insolvency: Personal and Corporate Law and Practice* (8th ed, Thompson Reuters, Sydney, 2014) at [14.220].
[17] *Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd* [2011] NSWCA109 at [162].

Question 14: *Do you agree that if recommendations 1-13, 15, 17 and 24-27 were implemented, that these changes should also be made to the Insolvency Act 2006?*

Yes.

Other comments

Question 15: *Do you have any other comments on Report No. 2?*

CCNZ is grateful to the members of the IWG for the time and expertise that they have contributed to the Report and this important area of law reform. CCNZ also appreciates the Government's interest in improving, in particular, the voidable transactions regime so that it is fairer for all creditors.

Conclusion

The proposed reform of voidable transactions is of vital interest to our members. We would be happy to discuss any aspect of our submission with you.

Re paras 61 and 62 of the Report: CCNZ is concerned that the proposed reforms do not address the knowledge issues.

Yours faithfully
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