Restructuring Insolvency & Turnaround Association of New Zealand

Submissions on the Review of Corporate Insolvency Law

Report No. 2 of the Insolvency Working Group, on voidable transactions, Ponzi schemes and other corporate insolvency matters

Questions for submitters on Report No. 2

When responding to the questions below please include your reasons and supporting evidence.

Chapter 1: Voidable Transactions

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)

1.1 RITANZ generally agrees with the Insolvency Working Group's **(IWG)** assessment of the impact of the Supreme Court's decision in *Allied Concrete v Meltzer* on New Zealand's voidable transactions regime.

1.2 Prior to the Supreme Court's decision it was very difficult for a creditor in an otherwise unremarkable transaction with the insolvent debtor to show that it had given additional value to the debtor at the time it received payment from the debtor. On the other hand, as the IWG have pointed out, any ordinary trade creditor will always have provided "value" to the debtor at the time their original transaction took place. This is what creates the debtor's obligation to the creditor in the first place.

1.3 As a result of the Supreme Court's decision that "value" given at the time of the original transaction is sufficient for the purposes of s296(3)(c), the scope of the defence is much broader than had previously been understood. "Value" is almost always given: so the first limb of s296(3)(c) is almost always met; and the second limb of section 296(3)(c) is almost always irrelevant. Instead, the focus is now on whether or not the creditor acted in good faith and without reasonable grounds to suspect insolvency. This puts the liquidator's focus squarely on the particular circumstances of each individual creditor; and as such shifts the balance towards each of their individual interests rather than the interests of the general body of creditors taken as a whole.

(b) If not, what is your assessment of the impact of the decision?

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

2.1 RITANZ agrees that the underlying rationale for any voidable transactions regime is to give effect to the *pari passu* principle of equal sharing between similar creditors. In order to achieve equal sharing, any voidable transaction regime will necessarily interfere with the rights of individual creditors to the extent that the regime permits otherwise lawful and proper payments to creditors to be overturned. Commercial certainty for individual creditors is sacrificed in the interests of equal sharing between similar creditors.

2.2 RITANZ also agrees that as far as possible a voidable transaction regime should minimise the administrative costs of liquidation and the compliance costs for creditors. These efficiency goals should be borne in mind when designing and assessing any voidable transaction regime. In practical terms, the efficiency of any regime may depend on precisely *how* liquidators exercise their rights and powers, as well as the nature and scope of those rights and powers.

(b) Should other objectives also be considered?

2.3 RITANZ agrees with the IWG (at para 41, footnote 31) that other objectives of insolvency law generally (eg ensuring that an insolvent company's remaining assets are preserved and put to most optimal use) may not be relevant to voidable transactions policy in particular.

2.4 RITANZ does submit, however, that the success of any voidable transactions regime will depend on the competence and integrity of those who enforce it.

		As noted above, that is especially the case when assessing the administrative efficiency of any particular regime.
	(c)	**What weighting should be given to the objectives, e.g. equally or differently?**
	2.5	RITANZ agrees with IWG that voidable transactions policy is essentially about balancing the rights and interests of creditors collectively with those of each creditor individually.
	2.6	RITANZ members will no doubt have different views as to precisely where that balance should be struck. However, RITANZ notes: **(a)** that the voidable transactions regime is an essential part of applying the *pari passu* principle to ensure similar creditors are treated similarly; and **(b)** as things stand, insolvent companies in New Zealand are often left to trade for relatively significant periods before they are placed into liquidation. There can be various reasons for this. Obviously, the longer the period during which a company has been left to trade while insolvent, the more transactions will have occurred that prevent a *pari passu* outcome.
3.	**(a)**	**Do you agree with the IWG's views on the problems with the status quo? (paragraphs 56-69)**
	3.1	RITANZ generally agrees with the IWG's views on the problems with the status quo. In particular: **(a)** The relative ease with which a creditor can establish that it "gave value" means that claims will often primarily depend on whether the creditor knew of the debtor company's poor financial position. This: **(i)** is inconsistent with the effects-based regime provided for in the Companies Act 1993 (**Act**); **(ii)** might encourage creditors to learn as little as possible about the debtor's financial position; and **(iii)** in any event, can be time-consuming and expensive for a liquidator to investigate. **(b)** Conversely, prior to the Supreme Court's *Allied Concrete* decision it was relatively difficult for creditors to rely on the s296 defence. Moreover, as things stand, individual creditors are at risk of clawback of any transactions entered into with the company in the period two years prior to its liquidation. This is longer than that which applies in many other jurisdictions with an effects-based test.
4.	**(a)**	**What are your views on the package of changes recommended by the IWG in Chapter 1? (recommendations 1 and 2 and paragraphs 72-77)**
	4.1	The members of RITANZ will have a range of views on the recommended changes. RITANZ has strongly encouraged its members to make submissions that set out there issues.
	4.2	RITANZ tends to support the package of changes recommended by the IWG. These changes will make it more difficult for creditors to defend a voidable transaction claim, but will shorten the period during which their transactions with the debtor are at risk of being avoided.
	4.3	All of the RITANZ members involved in preparing this submission agreed that the clawback period should be reduced. Some agreed with the IWG that a 6 month period was appropriate. Others thought a 12 month period was appropriate, with a presumption of insolvency for the 6 month period prior to

		liquidation; and the liquidator having the onus of proving insolvency for the period 6-12 months prior to liquidation.
	(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.**
	4.4	RITANZ agrees that the IWG recommendations should be implemented as a package. This should strike an acceptable balance between pursuing a *pari passu* distribution and maintaining an appropriate level of commercial certainty for individual creditors.
	4.5	RITANZ does not hold particular information on the number or value of voidable transactions that fall within the specified period. However, RITANZ is anecdotally aware that:
		(a) It is not uncommon for liquidators to pursue claims that fall within the specified period but not the restricted period. Different liquidators may have different practices/policies in this regard;
		(b) Liquidators may be more inclined to seek to avoid transactions that occurred during the specified period with creditors who also transacted with the company during the restricted period; and
		(c) Liquidators and creditors may ultimately settle disputes on the basis that transactions that occurred during the restricted period will be avoided, while transactions that occurred during the specified period will not.
5.	**Are there other feasible options?**	
	5.1	The numerous statutory formulations during the last 25 years (as recorded in Annex 4 of the IWG report) demonstrate that there are a range of options available to policy makers. The different and sometimes conflicting judgments demonstrate that successfully implementing any given voidable transactions policy is not always easy. The amendments proposed by the IWG are relatively straightforward and strike an appropriate balance between the competing interests.
Chapter 2: Other issues relating to voidable transactions and other recoveries		
6.	(a)	**What are your views on the other changes to the voidable transaction regime and other recoveries recommended by the IWG in Chapter 2? (recommendations 3-11)**
	6.1	Most of these recommendations deal with quite specific matters of policy. Again, there is room for a range of views as to whether the recommendations should be implemented. RITANZ's members may hold different views. That said, RITANZ tends to broadly agree with most of the Chapter 2 recommendations.
	(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?**
	6.2	Recommendation 4 – ie standardising the period of vulnerability for all clawbacks at 4 years where the preferred creditor is related to the debtor company, has the potential to materially increase recoveries in certain situations.
	6.3	Other than that, the recommended changes may not necessarily have a material impact across the board, but do seem to recalibrate some of the policy settings in a legitimate way.
	(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?
	6.4	Most voidable transaction claims are initiated within 3 years of the commencement date of the liquidation, but it is certainly not uncommon for claims to be initiated in years 4 – 6. There can be a range of reasons for the relative delay, some of which are more valid than others.
	6.5	Concerning recommendations 7 and 8, RITANZ agrees that there are good policy reasons to reduce the limitation period from 6 years to 3 years following the date of liquidation, as set out in para 98 of the IWG's report.
	6.6	RITANZ also agrees that the High Court should have the discretion to extend this limitation period on application by the liquidator. However, these extensions should not be routinely granted. Rather than simply allowing the Court to grant the extension where it considers it is "just and equitable" to do so, more legislative guidance should be provided as to what the Court should consider when deciding whether to grant an extension. The example provided for in paragraph 99 of the report (ie where there is evidence that the director or the creditor had obstructed the liquidator from obtaining information) is a useful indicator. Other factors the Court should also take into account include: any other reasons for the delay; the quantum of the claim; and its relative merits.
7.	(a)	**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?**
	7.1	RITANZ agrees that recommendations 3 – 8 could be made with or without implementing recommendations 1 – 2, but submits it would be preferable for the recommendations to be implemented together.
Chapter 3: Procedural issues		
8.	(a)	**What are your views on the procedural changes proposed by the Insolvency Working Group in Chapter 3? (recommendations 12-15)**
	8.1	RITANZ broadly agrees with the procedural changes proposed by the IWG.
	8.2	RITANZ suggest that consideration should also be given as to whether it should be necessary for liquidators to file in Court the original notice to set aside a voidable transaction or charge as is presently required by s294(1)(a). The rationale for requiring these notices to be filed in Court is to provide the Court with some supervision over the process. However: **(a)** the reality is the Court does not review the notice in any way unless and until the liquidator also makes a formal application to set the transaction aside; **(b)** as the IWG has noted at paragraph 128 and 129 of the IWG report, the liquidators will soon be formally regulated along the lines set out in the IWG's first report, so higher and more easily enforceable standards of conduct can be expected.
	8.3	On the other hand: **(a)** the current requirement that notices be filed in Court can cause inexperienced creditors wrongly to infer that the Court is giving notice that the creditor must return the earlier payment. That is obviously not the case. **(b)** there is a cost of requiring liquidators to file every notice in the High Court. No doubt this also imposes a degree of administrative burden on the High Court. This cost may be unnecessary. It would be interesting to know how many notices get filed without subsequent proceedings ever being issued.
	(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? IWG initially recommended requiring liquidators to explain in the formal notice the exact basis upon which the transaction or charge specified in the notice is claimed to be void. This would be to constrain the practice of some liquidators to serve notices as a matter of course on all creditors who had received payment from the debtor during the relevant period. However, the IWG determined that this issue would be better addressed through the licensing regime that the Government has agreed to implement through the Insolvency Practitioners Bill. IWG recorded their expectation that the licensing regime would lead to codes of conduct that would include requirements for liquidators to provide explanations for the basis of a voidable transaction claim. Failure to comply with this requirement could then be addressed by the enforcement of the code of conduct. RITANZ agrees with that approach. Liquidators are already obliged to use their powers only for a proper purpose. It would likely be inconsistent with that obligation for a liquidator to have a general policy of issuing notices to all creditors who have received payment in the relevant period prior to liquidation without at least some analysis of whether or not the payment is actually voidable. Mandatory licencing will help enforce those obligations. RITANZ's code of conduct and practice standards will develop over time and should preclude this practice.
Chapters 1-3: Voidable transactions and recoveries generally	
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 IWG's report?** **9.1** Section 239 ACB describes the circumstances in which a transaction by a company in administration is not subject to the voidable transaction provisions. The phrase "carried out by the deed administrator" in section 239 ACB(1)(b) could be deleted to clarify that transactions "specifically authorised by the deed of company arrangement" are not subject to the regime regardless of who carries out the transactions.
Chapter 4: Ponzi schemes	
10.	**What are your views on the possible changes to the Property Law Act 2007 outlined by the IWG to aid the recovery of funds (adding a Ponzi presumption and a good faith defence)? (recommendation 16(a))** **10.1** The IWG recommended that following the Supreme Court's decision in *McIntosh v Fisk*, the Government should assess whether to: **(a)** (aid the recovery of funds under the Property Law Act 2007 (**PLA**) by adding a Ponzi presumption and/or a good faith defence; and **(b)** establishing a compensation scheme. **10.2** A Ponzi presumption of fraudulent intent would relieve investors from the burden of proving that the debtor had an intention to defraud, hinder or delay creditors. It would also avoid the need for investors to prove the debtor was insolvent or nearly insolvent. The main argument against doing this relates to the difficulty of defining a Ponzi scheme; failing companies may often take on the appearance of a Ponzi scheme. **10.3** RITANZ agrees that it would be difficult to define the scope of any insolvency law reform intended to deal with fraudulent Ponzi schemes. Insolvency law touches on various aspects of Company law (including as to directors duties) and property law. It is shaped by a unique set of policy drivers that are ultimately directed at restoring sustainable businesses; salvaging viable business assets, and ensuring a fair and efficient return to creditors. However, it is not generally the purpose of insolvency law to provide protection against systematically fraudulent conduct. **10.4** Such protections would be better provided for in the design and enforcement of securities laws as set out in the Financial Markets Conduct Act. The fact that

it is proposed to shorten the period during which transactions are susceptible to the voidable transaction regime demonstrates why this is not the best way to deal with Ponzi schemes. In the case of a fraud the policy goal of providing commercial certainty to recipients to some extent falls away.

10.5 RITANZ also agrees with IWG that further analysis will be required to determine whether a compensation scheme should be set up. Such a compensation scheme could give investors an unfair advantage by reducing or removing the risk of investment. The size of the NZ market might also make it difficult to establish a compensation scheme without some form of Government contribution or underwriting.

10.6 The Supreme Court's decision in *McIntosh v Fisk* has provided little by way of guidance specifically relevant to Ponzi schemes. The Court emphasised that the outcome turned on the unique facts of the case (Judgment, para 100).

- For these reasons, RITANZ suggests that Ponzi schemes be considered separately, outside of the Reports, rather than risking delay in the consideration and implementation of other recommendations.

Chapter 5: Other corporate insolvency issues

11. **(a)** **What are your views on the other corporate insolvency law changes proposed by the IWG in Chapter 5? (recommendations 17-30)**

11.1 **R17** - RITANZ generally supports this change. The definition will need to take into account the impact of section 23 of the Personal Property Securities Act 1999 (**PPSA**) which effectively excludes from the definition of "security interests" a number of arrangements which would prima facie be included. RITANZ agrees with the Court of Appeal in *Dunphy v Sleepyhead Manufacturing* Co that the Companies Act (Part 16) definition of "Secured Creditor" should be consistent with the PPSA as far as possible.

11.2 **R18** - RITANZ members will undoubtedly have different views on this recommendation. RITANZ does not express a view, but offers the following observations.

11.3 First, RITANZ notes that the IWG seemed to focus its policy discussion on situations" where directors of the debtor company (or interests associated with them) hold a general security agreement and the directors continue trading long after the company ought to have been liquidated" (paragraph E21). However:

- related party secured creditors and transactions with directors are special categories; and
- if it is the related party relationship of the secured creditor which is a concern, then that might better be considered under the related party transactions provisions, rather than as justifying a major change which will be to the disadvantage of all general security holders.

11.4 Certainly, RITANZ agrees that directors with GSAs over the company's assets should not be able to benefit from or block reckless trading claims. RITANZ also submits that director guarantors who pay arms-length secured creditors should not be able to subrogate into those secured creditor's rights to benefit from reckless trading claims.

11.5 Secondly, RITANZ is aware that some of its members consider that other non-related secured creditors, including banks, will have access to better financial from the Company that should more easily enable them to detect reckless trading by the directors. They argue that if secured lenders elect to continue funding the Company in circumstances where they knew (or could have known) that its directors were trading recklessly then they should not be able to assert priority over unsecured creditors to the proceeds of any reckless trading claims that liquidators might subsequently bring.

In any event, they say that if a secured creditor has not already been repaid in full from the proceeds of sale of the Company's secured assets, it remains open

to the secured creditor to effectively surrender its security and share the proceeds of reckless trading actions on a *pari passu* basis with other unsecured creditors. They also argue that any group of unsecured creditors, including a previously secured creditor that has surrendered its security, can obtain a priority under the 7th Schedule by funding any reckless trading action.

11.6 In response, banks and other secured creditors dispute that the information which they might receive from Companies would necessarily enable them to detect reckless trading on the part of its directors, as prohibited by s 135. They also argue that in the case of most debtors, they will not have better information than other creditors; and in fact other creditors with more direct and personal relationships with the debtor may be better placed to detect reckless trading. As such, any iformation asymmetry is often not to the advantage of the secured creditors.

They also say that it is when a company is facing some financial difficulty that additional secured funding may be required most urgently to give the company any realistic prospect of survival, and that this will often be in the best interests of all creditors.

They argue that reckless trading claims tend to affect the value of the whole business, and in particular its value as a going concern. As such they say that a creditor with a general security interest, who has based its lending decisions on the value of the company as a going concern, will potentially be more exposed to losses in going concern value (as well as physical asset value) arising from reckless trading activities. Secured creditors also point out that they may be best placed to fund reckless trading actions against directors, which can also benefit unsecured creditors.

11.7 **R20 –** Filing Voluntary Administrator's Reports: RITANZ supports the recommendation that VA's reports be filed with the Registrar.

11.8 **R21** – Telecommunication Services: RITANZ agrees with the recommendation to incorporate by reference the broader definition of "Telecommunications Services" continued in the Telecommunications Act 2001 into the Companies Act 1993 and the Receiverships Act 1993. RITANZ submits as things stand, the moratorium on enforcement set out in Part 15A does not prohibit a refusal to supply essential services.

RITANZ also submits that the prohibition on refusing to supply essential services provided for at s275 of the Companies Act 1993 and s40 of the Receiverships Act 1993 should also be incorporated into Part 15A of the Companies Act 1993 dealing with voluntary administrators.

11.9 **R22 –** Fines and Penalties: RITANZ supports this recommendation. Sections 303(2) and 308 are an unjustifiable anomaly which effectively punishes the company's unsecured creditors, not the wrongdoer. Fines and penalties should be provable, but be subordinate to claims made by unsecured creditors.

11.10 **R23 –** Electronic Communication: RITANZ supports the recommendation to allow communication with creditors by electronic means. Electronic communication is increasingly mainstream. It is unnecessarily burdensome in terms of cost and delay to require orders of the Court to use it.

11.11 **R27** – Priority of Paye: Prioritisation of PAYE payments after liquidation: RITANZ agrees that amendments should be made to s 167 of the Tax Administration Act so that no super priority is given to PAYE provable in liquidation beyond Schedule 7 of the Act. There should be no distinction between PAYE that is overdue at the time of liquidation and PAYE that falls due for payment after the date of liquidation but relates to a pre-liquidation period.

11.12 **R28** – Priority of Administrators' Fees: Priority of voluntary administrator's fees when a receiver is appointed: RITANZ supports the recommendation that administrators have a priority for their fees during a receivership.

11.13 **R29 –** Circularity of priority:

RITANZ supports the recommendation that s 30(2) of the Receiverships Act 1993 be amended to align with s 153(2)(b) of the PLA by adding into s 30(2) a requirement that the security interest created by the assignment has priority over the relevant general security interests. The intention of the 7th schedule is clear. Circularity creates uncertainty that can be unnecessarily expensive to resolve.

11.14 **R30 –** Statistical data

RITANZ supports the recommendation that the Registrar of Companies should collate and publish information to enhance the performance of the insolvency regime. It would be useful for the Registrar to publish statistics relating to such matters as the number of companies entering into each type of insolvency process; the number of insolvency appointments; the number of insolvency processes by region and industry; and the duration of company insolvency processes.

11.15 This would be particularly useful given the Registrar of Company's regulatory role under the forthcoming insolvency practitioner licencing regime. In that regard, we agree with the IWG that it would also be useful for the Registrar to publish complaints statistics.

(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?**

11.16 This is another issue on which RITANZ members are likely to hold a range of views.

11.17 RITANZ agrees that liquidators should have a right to obtain from third parties certain documents relating to the Company's affairs without going to the High Court without obtaining court orders.

11.18 The examples given in the IWG report (i.e. invoices, correspondence and credit notes) should be available without Court orders, although these may be company documents in any event. RITANZ agrees that the scope of any such power should be limited to documents that the Company would ordinarily have in its possession and should therefore be available to the liquidator. The costs of obtaining court orders can be disproportionately high, and may be prohibitive. The power to obtain documents from third parties should not, however, be available or allowed to operate as a substitute for non-party discovery orders where those are appropriate. RITANZ also considers there should be a "reasonable endeavours" threshold; and the third party should be entitled to be reimbursed reasonable costs and expenses in locating and providing documents.

(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?**

11.19 RITANZ agrees that if there are conflicting views then the matter should be clarified. Like the IWG, RITANZ does not have a strong view as to whether long service leave should or should not be part of the employee's preference. RITANZ members will likely have different views.

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

11.20 Again, RITANZ members will have a range of views on this issue. RITANZ does not express a view. However, it is submitted that administering a preference for gift cards and vouchers could create practical difficulties for liquidators and receivers, which should be considered. In particular:

- records will often be incomplete, even more so than with IRD/employees etc;

		• the value of gift cards/vouchers is often relatively small, whereas dealing with claims could be complex (and therefore time-consuming and expensive); • who would have the benefit of the preferential claim? The bearer or the payer? If the bearer, this may create a market for "junk" gift cards/vouchers; • there may be an asymmetry of value between the gift card/voucher and the goods "purchased" in an insolvency situation.
	(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)**
	11.21	RITANZ agrees that a 6 month time limit should be placed on the preference available to the Commissioner of Inland and the Collector of Customs. This reflects the superior information and extensive protections and powers available to the Commissioner that are not available to other creditors.
	11.22	There may be a range of views on the precise time limit to be applied to the Commissioner and Collector's preferences. IRD's response to the time limit will likely be to take steps more quickly to liquidate companies that do not pay their taxes. Where a company is placed into liquidation by order of the High Court on the application of the Commissioner or the Collector, the time limit on their preference should run from the date on which the application is filed in the High Court, rather than the date upon which the order is made. This is consistent with the calculation of any claw back period in the voidable transaction regime. It reflects the fact that a significant period of time will pass after a creditor makes a liquidation application, and before the High Court will be in a position to make the liquidation order. It also reflects the reality that different registries of the High Court are able to deal with liquidation applications within varying time frames.
	(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)**
	11.23	RITANZ agrees with the IWG that it would be useful for the Registrar to publish statistics concerning: the number of companies entering each form of insolvency process, the number of insolvency processes by region and industry, and the duration of company insolvency processes. RITANZ also agrees it would be useful for the Registrar to publish complaints statistics after the insolvency practitioner licencing regime comes into effect. This information should be relatively easy for the Registrar to collate, and would reveal trends that would be useful to regulators, creditors, market participants and insolvency professionals.
12.	**(a)**	**What are your views about the Insolvency Working Group's comments on the corporate restructuring processes in New Zealand? (paragraphs 173-177)**[1]
	12.1	RITANZ agrees that a director's safe harbour and *ipso facto* reforms should be considered further once the Australian reforms are implemented.
	(b)	**Does New Zealand's insolvency regime meet the OECD's objectives outlined in paragraph 173?**
	12.2	RITANZ considers that the substance of New Zealand's insolvency laws generally meets the OECD's objectives outlined in paragraph 173. However, it

[1] Report No. 2 was finalised before 28 March 2017, which was the date that the Australian Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer, released the draft Treasury Laws Amendment (2017 Enterprises Incentives No. 2) Bill 2017 for public comment. The draft Bill, along with the accompanying documents, details the safe harbour and *ipso facto* clause changes discussed in paragraph 176 of Report No. 2. Submissions closed on 24 April 2017.

	is essential that the licencing regime approved by Cabinet in November 2016 be implemented as soon as possible. As things stand New Zealand is one of the only countries in the OECD without a positive licencing regime for insolvency practitioners. The absence of a mandatory licencing regime does, on occasion create problems that mean the OECD's objectives are not met. **(c) How important is it for New Zealand's insolvency regime to be aligned with the Australian regime?** **12.3** RITANZ acknowledges that it is generally desirable for New Zealand's commercial laws to be broadly aligned with those of Australia. This reflects the close commercial relationship between the two countries. **12.4** RITANZ considers that it is generally desirable for the two insolvency regimes to be closely aligned. However, there will always be justifiable differences. Close alignment should not be an overarching policy goal if there are otherwise good policy reasons to justify some deviation.
13.	**Are there any other changes to corporate insolvency law not covered in Report No. 2 that should be made?** Our members may well have other changes they would like to recommend.
Chapter 6: Implications for personal insolvency law	
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	
15.	**Do you have any other comments on Report No.2?** No, other than to acknowledge the efforts of the IWG in preparing their very thorough and well-structured report.