



PITCHER PARTNERS

NSW PTY LIMITED

ACCOUNTANTS & ADVISORS

Level 22 MLC Centre
19 Martin Place
Sydney NSW 2000
Australia

Postal Address:
GPO Box 1615
Sydney NSW 2001
Australia

Tel: +61 2 9221 2099
Fax: +61 2 9223 1762

www.pitcher.com.au
partners@pitcher-nsw.com.au

Pitcher Partners, including Johnston Rorke,
is an association of independent firms
Melbourne | Sydney | Perth | Adelaide | Brisbane

Ref: AWE:tq

7 March 2013

Manager
Governance and Insolvency Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: insolvency@treasury.com.au

Dear Sir

EXPOSURE DRAFT: INSOLVENCY LAW REFORM BILL 2013

Pitcher Partners NSW Pty Limited welcomes the opportunity to offer comment on the Exposure Draft and accordingly submits a joint submission prepared with Pitcher Partners in Melbourne, Adelaide and Perth.

Pitcher Partners is a national association of independent firms and an independent member of Baker Tilly International. Pitcher Partners operates business recovery and insolvency services from its offices in Sydney, Melbourne, Adelaide and Perth.

Anthony Elkerton is a member of the Insolvency Practitioners Association (IPA) NSW state committee.

Please contact either myself or Andrew Yeo of Pitcher Partners in Melbourne, Leigh Prior of Pitcher Partners in Adelaide or Bryan Hughes of Pitcher Partners in Perth should you wish to discuss the content further.

Yours faithfully
PITCHER PARTNERS NSW PTY LIMITED

A W Elkerton
Director

DOCREF: 137624.1



PITCHER PARTNERS

ADVISORS PROPRIETARY LIMITED

Level 19
15 William Street
Melbourne
Victoria 3000

Postal Address:
GPO Box 5193
Melbourne Vic 3001
Australia

Tel: 03 8610 5000
Fax: 03 8610 5999

www.pitcher.com.au
info@pitcher.com.au

Pitcher Partners is an association of independent firms
Melbourne | Sydney | Perth | Adelaide | Brisbane

EXECUTIVE DIRECTORS

J BRAZZALE	D B RANKIN
C J TATTERSON	A R FITZPATRICK
I D STEWART	R RIGONI
M W PRINGLE	G M RAMBALDI
D A THOMSON	D A KNOWLES
M J LANGHAMMER	M C HAY
S SCHONBERG	V A MACDERMID
M D NORTHEAST	S DAHN
P A JOSE	A R YEO
M J HARRISON	P W TONER
T SAKELL	D R VASUDEVAN
G I NORISKIN	S D AZOOR HUGHES
B J BRITTEN	A T DAVIDSON
K L BYRNE	C D WHATMAN
S D WHITCHURCH	A E CLERICI
D J HONEY	P MURONE
G J NIELSEN	A D STANLEY
N R BULL	D C BYRNE
A M KOKKINOS	P B BRAINE
G A DEBONO	R I MCKIE
R H SHRAPNEL	F V RUSSO

Ref: AY:or

7 March 2013

Manager
Governance and Insolvency Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: insolvency@treasury.com.au

Dear Sir

EXPOSURE DRAFT: INSOLVENCY LAW REFORM BILL 2013

Pitcher Partners Advisors Pty Limited welcomes the opportunity to offer comment on the Exposure Draft and accordingly submits a joint submission prepared with Pitcher Partners in Sydney, Adelaide and Perth.

Pitcher Partners is a national association of independent firms and an independent member of Baker Tilly International. Pitcher Partners operates business recovery and insolvency services from its offices in Sydney, Melbourne, Adelaide and Perth.

Andrew Yeo is a member of the Insolvency Practitioners Association.

Please contact either myself or Anthony Elkerton of Pitcher Partners in Sydney, Leigh Prior of Pitcher Partners in Adelaide or Bryan Hughes of Pitcher Partners in Perth should you wish to discuss the content further.

Yours faithfully

PITCHER PARTNERS ADVISORS PTY LIMITED



A R Yeo
Director



PITCHER PARTNERS
ACCOUNTANTS AUDITORS & ADVISORS

160 Greenhill Road
Parkside SA 5063
Australia

Postal Address:
PO Box 98
Unley SA 5061
Australia

Tel: 08 8179 2800
Fax: 08 8179 2885
www.pitcher.com.au
enquiries@pitcher-sa.com.au

PRINCIPALS
JEFFREY D ALLEN
THOMAS H VERCO
MICHAEL J LANE
RICHARD D BROOKS
MICHAEL O BASEDOW
BEN V BRAZIER
ANDREW P FAULKNER
ANDREW C BEITZ

Ref: LP

7 March 2013

Pitcher Partners is an association of Independent firms
Melbourne | Sydney | Perth | Adelaide | Brisbane

Manager
Governance and Insolvency Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: insolvency@treasury.com.au

Dear Sir

EXPOSURE DRAFT: INSOLVENCY LAW REFORM BILL 2013

Pitcher Partners SA welcomes the opportunity to offer comment on the Exposure Draft and accordingly submits a joint submission prepared with Pitcher Partners in Sydney, Melbourne and Perth.

Pitcher Partners is a national association of independent firms and an independent member of Baker Tilly International. Pitcher Partners operates business recovery and insolvency services from its offices in Sydney, Melbourne, Adelaide and Perth.

Michael Basedow is a member of the Insolvency Practitioners Association.

Please contact either Leigh Prior at this office, Anthony Elkerton of Pitcher Partners in Sydney, Andrew Yeo of Pitcher Partners in Melbourne or Bryan Hughes of Pitcher Partners in Perth should you wish to discuss the content further.

Yours faithfully
PITCHER PARTNERS SA PARTNERSHIP PTY LIMITED

M Basedow
Director

BRW.
CLIENT
CHOICE
AWARDS
2012
WINNER



PITCHER PARTNERS

(WA) PROPRIETARY LIMITED

Level 1
914 Hay Street
Perth
WA 6000

Postal Address:
PO Box 7191
Cloisters Square
WA 6850

Tel: 08 9322 2022
Fax: 08 9322 1262

www.pitcher.com.au
partners@pitcher-wa.com.au

Fitcher Partners including Johnston Rorke
is an association of independent firms
Melbourne | Sydney | Perth | Adelaide | Brisbane

Ref: BH

7 March 2013

Manager
Governance and Insolvency Unit
Corporations and Capital Markets Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: insolvency@treasury.com.au

Dear Sir

EXPOSURE DRAFT: INSOLVENCY LAW REFORM BILL 2013

Pitcher Partners WA Pty Limited welcomes the opportunity to offer comment on the Exposure Draft and accordingly submits a joint submission prepared with Pitcher Partners in Sydney, Melbourne and Adelaide.

Pitcher Partners is a national association of independent firms and an independent member of Baker Tilly International. Pitcher Partners operates business recovery and insolvency services from its offices in Sydney, Melbourne, Adelaide and Perth.

Bryan Hughes is a member of the Insolvency Practitioners Association (IPA) WA state committee.

Please contact either myself, Anthony Elkerton of Pitcher Partners in Sydney, Andrew Yeo of Pitcher Partners in Melbourne or Leigh Prior of Pitcher Partners in Adelaide should you wish to discuss the content further.

Yours faithfully
PITCHER PARTNERS WA PTY LIMITED

B Hughes
Director

JOINT SUBMISSION BY PITCHER PARTNERS

SYDNEY MELBOURNE ADELAIDE PERTH

EXPOSURE DRAFT : INSOLVENCY LAW REFORM BILL 2013

Overall Comments

We note that a second tranche of the Bill was expected to be released setting out further consequential amendments to the corporate and personal insolvency legislation as a result of the proposed reforms, along with transitional measures. Draft regulations were also to be released for public consultation. However, at the date of submission, these documents have not been released and we have been unable to comment on specific amendments that refer to “the regulations”.

Notwithstanding, we are firmly in favour of the proposed reforms and are of the opinion that the reforms largely achieve the stated objectives of the proposals paper.

Specific Comments

Adopting the numbering of the proposals paper and corresponding reference to the Exposure Draft (where applicable) we offer specific comments as follows:

Proposal Paper Paragraph	Comments
APPLICATION TO BECOME A PRACTITIONER	
43	<p>The registration fee should be harmonised between corporate and personal insolvency registration if the registration process is to be brought into line. The current bankruptcy trustee fee represents the additional costs of having registration by committee.</p> <p>We note that the fee has not yet been imposed but suggest the harmonisation of the registration fee for corporate and personal insolvency registration as set out in 8-10(2) and 8-35(b). We would expect that any revised corporate registration fee would not exceed the existing personal registration fee.</p> <p>We also consider that the industry representative should be remunerated for their time in participating on the Committee so as to ensure the broadest industry representation as possible.</p> <p>Currently the proposed bill does not address remuneration for members of the Committee.</p>
CASTING VOTES ON REMUNERATION	
66	<p>We consider that the definition of “ordinary resolution” should be aligned under both corporate and personal regimes. Creditors will otherwise remain confused, which ultimately will lead to greater costs.</p>

AD HOC INDIVIDUAL REQUESTS FOR INFORMATION	
97	<p>We have been, and remain concerned with the provision of certain types of creditor information. The “reasonable request” standard creates ambiguity. There needs to be safeguards for the release of sensitive information and the Practitioner should have absolute discretion to refuse to provide information in certain circumstances. For example:</p> <ul style="list-style-type: none"> ▪ The debt owed to particular creditors, rather than a total indebtedness of the Company may have privacy and commercial impacts on particular creditors. For instance two suppliers of similar products or services to an insolvent company may seek to exploit commercially sensitive information such as an outstanding debt from a company for unfair advantage. We would recommend a threshold (say \$10,000) be established and practitioners would only have to nominate if the amount owed was above or below the threshold. ▪ Personal addresses of some creditors (individuals such as employees) may not wish to have this information made available to other parties yet practitioners are compelled by law to provide their details to third parties when their permission has not been sought. It seems to us incongruous that personal details of an employee that cannot be provided to fellow employees by a solvent employer by law are broadcast to not only fellow employees but all other creditors upon the insolvency of their employer. <p>Creditors having the ability to opt in or out of the provision of their details, may partially address this concern, however for large insolvencies the administrative costs may be burdensome. It may be more appropriate to limit the information to name of creditor and email address only.</p>
112	<p>The recent Infringement Notice regime under Section 277B of the Bankruptcy Act is not dissimilar to the corporate late lodgement fee already. Late fees are already the personal liability of the trustee and not reimbursable from the administration. We query whether there is any benefit to amendments proposed.</p>
COMMITTEE FUNCTIONS	
157	<p>We are of the opinion that where a practitioner is suspended and they retain their employment with the same firm, then that consideration should be given as to whether (in the case of joint appointments) the practitioner’s files should be transferred to a practitioner from a different firm if the suspension is a result of continued systematic breaches of the law.</p> <p>Likewise, if the suspended practitioner moves to a new firm, the files should not be transferred to a practitioner also from the new firm.</p> <p>We are concerned that by retaining the files within the firm that employs the suspended liquidator any transgressions that negatively impact creditors may not be fully investigated and pursued.</p>

REMOVAL RESOLUTION	
181	<p>We agree with this reform save for the motion to be passed, it should be by at least 50% in number of all creditors entitled to vote, not just “by resolution” as set out in 32-35.</p> <p>There is an increased risk for an abuse of the process and poor decision making on behalf of creditors. There is an inherent education requirement for creditors in selecting an appropriate practitioner and the impact of costs to the administration.</p> <p>The Act should protect practitioners from creditors seeking to manipulate the insolvency process or unduly influence the practitioner. In this regard, we acknowledge the Court’s powers to prevent removals that amount to an improper use of this section. To this end, and similarly to s600A of the Corporations Act, the Court may be given the power to set aside the resolution if the outcome is determined by creditors having a financial interest in removing the practitioner.</p> <p>However we query whether a more timely remedy, other than approaching the Court, may be available through the use of ASIC and ITSA.</p>
REPORT AS TO AFFAIRS/STATEMENT OF AFFAIRS	
234	<p>While we agree that suspensions should come to an end after compliance (ie lodgement of the RATA), this reform needs to incorporate flexibility to extend suspension where a RATA is substantially incomplete or knowingly includes incorrect information.</p> <p>Directors frequently write “nil” or “not applicable” which impedes the administration and increases costs. By having the ability to extend a suspension, there should be an increased accuracy level in the completed RATA forms.</p> <p>In bankruptcy if a Statement of Affairs (SOA) is not completed to the satisfaction of the Bankruptcy Registry, the SOA is rejected and the bankrupt remains bankrupt indefinitely. The same provision could apply to this reform where if the RATA is not acceptable to ASIC, the suspension is indefinite until such time as the RATA is completed to an acceptable level.</p>
ACCESS TO CREDITOR LISTS	
242	<p>We reiterate our concerns as to privacy and the release of potentially sensitive information about a creditor’s debt to its competitors and personal address information as noted in paragraph 97 above.</p>

Generally

Pitcher Partners supports the Government's measures to better regulate the profession and harmonise the corporate and personal insolvency regimes in Australia. We would be pleased to contribute to any further discussion or consultation with the industry.



A W Elkerton

Director

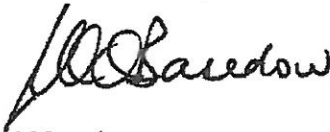
Pitcher Partners NSW Pty Limited



A R Yeo

Director

Pitcher Partners Advisors Pty Limited



M Basedow

Director

Pitcher Partners SA Partnership Pty Limited



B Hughes

Director

Pitcher Partners WA Pty Limited