ARITA
AUSTRALIAN RESTRUCTURING INSOLVENCY & TURNAROUND ASSOCIATION

1 November 2021

Manager
Market Conduct Division
Treasury
Langton Cres
PARKES ACT 2600

By email: MCDInsolvency@Treasury.gov.au

Dear Sir/Madam

Consequential amendments to regulations supporting small business insolvency reforms

Thank you for the opportunity to lodge a further submission in the response to the exposure draft legislation and explanatory material for the Treasury Laws Amendment (Corporate Insolvency Reforms Consequentials) Regulations 2021 (Regulations).

ARITA has reviewed the provided materials and acknowledged that the feedback provided by ARITA that regulation 5.3B.10 needs to be repealed has been incorporated into the updated draft Regulations.

We do not propose to restate aspects of our previous submission to the consultation on the consequential amendments to small business insolvency reforms that closed on 7 May 2021 but again draw your attention to the unaddressed concerns therein.

In respect of the further amendments proposed, we make the following comments:

- **Item 1** – while we are agreeable to the definition of restructuring practitioner, as defined in the *Corporations Act 2001* (Act) being incorporated into the Competition and Consumer (Industry Codes—Franchising) Regulation 2014, we highlight that the definitions of other types of external administrations (liquidator, voluntary administrator, deed administrator) are not captured. For consistency we suggest that all definitions be incorporated.

- **Item 4** - while we are agreeable to the definition of restructuring practitioner, as defined in the Act being incorporated into the Competition and Consumer (Industry Codes—Oil) Regulations 2017, we highlight that the definitions of other types of

external administrations (liquidator, voluntary administrator, deed administrator) are not captured. For consistency we suggest that all definitions be incorporated.

- **Item 10** – the addition of 'restructuring practitioner for the company' to paragraphs 2.84(3)(k) and (4)(h) of the Migration Regulations 1994 will not capture appointments of restructuring practitioner for a restructuring plan. The amendment should be extended to capture the plan period.

- **Item 11** - while we are agreeable to the definition of restructuring practitioner, as defined in the Act being incorporated into the National Consumer Credit Protection Regulations 2010, we highlight that the definitions of other types of external administrations (liquidator, voluntary administrator, deed administrator) are not captured. For consistency we suggest that all definitions be incorporated.

- **Item 12** – ARITA called for the extension of exemptions in regulation 20 of the National Consumer Credit Protection Regulations 2010 be extended to capture restructuring pursuant to the new Part 5.3B as part of its submission in relation to the licensing debt management firms and we support the amendment.

  That said, we again highlight that the general exemption from licensing requirements for registered liquidators and trustees in regulation 20 of the National Consumer Credit Protection Regulations 2010 only applies to the extent that the person is engaging in the specified credit activity.

  The exemptions apply to the specific types of insolvency appointments noted while the appointee is "performing functions, or exercising powers" in that role or "performing functions, or exercising powers, incidental to the person's appointment".

  While we acknowledge it is outside the scope of this consultation, we note that the exemption for registered liquidators or trustees must be extended to capture those who provide debt management assistance outside of a formal appointment. Registered liquidators and trustee are experts in the area of debt management assistance, and the new provisions must accommodate their ability to provide this advice outside of a formal appointment without requiring licencing.

- **Item 15** – we suggest that the amendment in relation to restructuring be split to separately recognise a body corporate under restructuring and a body corporate that is subject to a restructuring plan.

  For completeness, we also suggest that subregulation 3L(1) be reordered to ensure that the deed of company arrangement subregulation follow the administration subregulation as they are both appointments pursuant to Part 5.3A of the Act.

  We also query if the reference to a restructuring plan should mirror the deed of company arrangement provision and be extended to refer to a plan 'that has not yet terminated'.

As always, we look forward to continuing to work closely with Treasury and the Government generally to ensure the efficiency and effectiveness of Australia's insolvency system. Should you wish to discuss any aspect of this submission, please contact Ms Narelle Ferrier, Technical & Standards Director on 02 8004 4340.

Yours sincerely

John Winter
Chief Executive Officer

About ARITA

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

We have more than 2,200 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 80% of Registered Liquidators and 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 2020, ARITA delivered 70 professional development sessions to over 8,200 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' knowledge and experience. We represented the profession at 15 inquiries, hearings and public policy consultations during 2020.