3 October 2008

Review of Legal Framework for Administration of the GST
Board of Taxation Secretariat
C/- The Treasury
Langton Crescent
PARKES ACT 2600

Our ref: BoardofTax ipa detailed submission

By email: taxboard@treasury.gov.au

Dear Sir/Madam

Review of the Legal Framework for the Administration of GST

The Insolvency Practitioners Association of Australia (IPA) welcomes the opportunity to provide submissions to the Board of Taxation in its Review of the Legal Framework for the Administration of GST. As foreshadowed in our summary letter dated 12 September 2008, this letter is a more detailed submission outlining a preferred GST model for insolvency and specific recommendations.

This submission is made by the IPA, the peak professional body representing company liquidators, trustees in bankruptcy and other insolvency professionals. We appreciate the opportunity to comment.

The IPA recognises that GST will apply to transactions undertaken in the course of personal and corporate insolvency, where the entity is registered. However, that outcome should reflect the fundamental principle that GST is not a tax on business but a consumption tax. The IPA's recommendations are specific reforms to the law, which, in our view, will enable the GST system to better achieve the fundamental objective of taxing final private consumption. Thus, the overall economic burden of the GST on insolvency should be negligible. The application of GST to insolvency should be economically efficient and neutral with the economic impact passed through the transaction chain from incapacitated entities and their representatives to final consumers who acquire goods and services directly or indirectly from those entities and representatives.

For the remainder of this document, the broad label "insolvency" is given to the series of circumstances, appointments, offices and relationships that fall within the ambit of Division 147, A New Tax System (Goods and Services Tax) Act 1999 (the GST Act) and the associated terms "representative" and "Incapacitated entity". For convenience, "insolvency" is used to cover various scenarios which may not be in practice be cases of financial distress such as member's voluntary liquidations.

Background

The IPA's submission is best understood in the context of recent developments for GST in respect of insolvency. It was not long after the introduction of GST on 1 July 2000 that problems began to arise in the application of GST to insolvency. It appeared that the legislated GST model for insolvency had not been comprehensively planned and tested in isolation. Rather, from a design perspective the model appeared to be "bolted on" to the overall GST regime with the hope that it was workable.

Insolvency practitioners were actively engaged in the consultation process and provided extensive commentary on the draft and actual legislation placed before them. However, the process was a reactive one and a comprehensive policy and complete detailed model for GST on insolvency was not presented to the profession, nor did it evolve. Insolvency practitioners had to predict how GST might apply to insolvency while still being yet to see how GST worked overall (like most practitioners).

It was only when insolvency practitioners began to apply the GST provisions to the broad range of appointments that the technical questions, calculation difficulties and compliance burdens arose. Insolvency practitioners were not alone in their struggles. Tax advisors, lawyers and the ATO were having similar difficulties in determining how GST should apply in practice to insolvency. The ATO resorted to communicating its interpretation of the legislation in an ad hoc basis through the Insolvency Practitioners Industry Partnership Questions and Answers on its website. It has not issued a comprehensive public ruling (eg GSTR series) on the subject. It took until GSTB 2003/1 for the ATO to confirm its stance on a critical compliance matter being how to calculate input tax credits and bad debt adjustments when a dividend is paid to creditors.

Numerous fundamental technical questions remained despite the ATO's interpretation and communication efforts. The most fundamental was whether the insolvency practitioner was personally liable for GST on supplies and adjustments made during the course of appointments. Various representatives of the profession argued that the insolvency practitioner did not have a personal liability because they are acting in the capacity as an agent for the incapacitated entity. Other commentators argued that the scheme of the legislation, as derived from its structure and explanatory material, was to confer a personal liability upon the representative. [1]

This question has come before the courts once, to IPA's knowledge, and left unresolved. In *Sunnyville Pty Ltd v A.D.I.G Pty Ltd* [2006] QSC 249, Lyons J said at [57] –[58]:

> *"The liquidator concedes that Division 147 of the GST Act does not in terms state that a liquidator personally makes any taxable supplies in carrying on a company's enterprise during his or her appointment. The liquidator however points to the Explanatory Memorandum to the GST Act as an indication that the intention of Parliament was to make the liquidator personally liable for GST payable in respect of taxable supplies made during his or her appointment. The liquidator also accepts that this view has in fact been rejected by academic commentators who state that the better view is that the liquidator does not have a personal liability for GST payable on taxable supplies made during his or her appointment because the liquidator is properly treated as an agent of the company in liquidation.*

[1] (Kalmen Datt "Division 147 – Oh what a tangled web we weave" 7 AGSTR 1 at page 1

[58] Whilst accepting that this view may prevail the liquidator is correct is claiming that it does remain vulnerable to a claim. JNJ has not contended that in the event that the liquidator will have a personal GST liability it will not fall within the scope of the liquidators lien for its reasonable costs charges and expenses. It is possible that there may be GST liability and it is difficult to argue with the liquidator's submission that it would be contrary to the salvage principle to require the liquidator to accept that risk, without recourse to the sale proceeds to meet its remuneration, costs, charges and expense of doing so. There is clearly a dispute between the parties in relation to this issue as to whether GST is payable. It would also appear that the state of the law is unclear and the view of the Deputy Commissioner in relation to the liquidator's liability is uncertain."

In August 2007, the Federal Treasury released an "in-confidence" Consultation Paper titled "GST and Representatives of Incapacitated Entities". The Paper outlined a relatively consistent GST policy for insolvency by way of a series of proposed legislative principles with "carve outs" and "add-ons". IPA lodged a submission to Federal Treasury commenting on the proposed principles. The IPA is not fully aware whether Treasury advanced its suggested policy.

The IPA is aware that the Board of Tax will have access to that Consultation Paper and any Treasury work to advance the proposed policy. Rather than re-present to the Board the detailed policies outlined in the Consultation Paper, the IPA will draw upon them where relevant including recommending them where it agrees. This submission will also express IPA's alternatives to those principles where relevant.

IPA's Detailed Comments and Recommendations

Our detailed recommendations and comments are set out below:

1. **Status of the representative's responsibilities** – Activities done by the representative, in its capacity as representative, should be taken, for GST purposes, to be activities done by the incapacitated entity (and not the representative).

   It is appropriate that where a representative is undertaking an insolvency administration of an incapacitated entity, that it is the entity that is treated as having undertaken the activities and not the representative personally.

   The IPA submits that the GST legislation (and not merely the Commissioner's practice) needs to ensure that:

   - any method that the incapacitated entity would have been eligible to use to work out the amount of GST payable on a supply (such as the margin scheme) or the amount of an input tax credit, can be used;
   - an adjustment arises in instances where an action performed by the representative would, if performed by the incapacitated entity, have given rise to an adjustment (for instance, the representative may make a taxable supply of an item that was acquired by the incapacitated entity for use in making input taxed supplies — in this case, a decreasing adjustment should generally arise);
   - supplies made by the representative in that capacity are taken into account in determining whether the incapacitated entity continues to be required to be registered (which, in turn, will determine whether the representative is required to be registered);

- a seamless transition occurs in cases where the incapacitated entity continues to trade after the representative's appointment has ended — for instance, the incapacitated entity will not be prevented from claiming an input tax credit in relation to a supply of second-hand goods it makes on the technicality that the goods were acquired by the representative; and
- the incapacitated entity will always be liable for the GST consequences that arise from supplies, acquisitions and importations made during the period of the representative's appointment — regardless of whether it was the incapacitated entity or the representative that undertook these transactions, subject to the variations in Recommendation 2. This places all types of representation of incapacitated entities on common footing.

2. **Liability** - The representative (and not the incapacitated entity) should only be liable for, or entitled to, the GST consequences that arise from a supply, acquisition or importation made during the representative's appointment – and only to the extent that the supply, acquisition, or importation falls within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs. A far as possible, GST liability and input tax credits should attach to the entity (incapacitated entity or representative) that received or issued consideration for the supply or acquisition in question. Where there are two or more representatives (for example a receiver and a liquidator), unless they are appointed jointly and severally (for example two liquidators appointed to the same company jointly and severally to undertake the liquidation as co-appointees), they should not be jointly and severally liable for GST.

   The IPA accepts a policy which results in the transfer to the representative of what would otherwise be liabilities and entitlements of the incapacitated entity in accordance with Recommendation 1: The liabilities and entitlements would be restricted to those pursuant to transactions falling within the representative's responsibility or authority, for example:

   - the GST payable on a taxable supply or taxable importation that the incapacitated entity makes or is taken to make under Recommendation 1, during the appointment of the representative. In accordance with the current treatment, this liability will not include GST amounts payable where consideration is received by the representative in respect of supplies made prior to its appointment by the incapacitated entity who was operating on a(?) cash basis. That GST should continue to be a liability of the incapacitated entity and be attributable to its concluding tax period;
   - any amount of GST that is 'reverse-charged' under Divisions 83 or 84 of the GST Act on a supply made to the incapacitated entity;
   - the GST payable on a progressive or periodic component of a taxable supply during the appointment of the representative to which Division 156 of the GST Act applies, that the incapacitated entity makes or is taken to make;
   - the input tax credit for a creditable acquisition or creditable importation the incapacitated entity makes or is taken to make during the appointment of the representative;
   - the input tax credit for a progressive or periodic component of a creditable acquisition during the appointment of the representative to which Division 156 of the GST Act applies, that the incapacitated entity makes or is taken to make;
   - any adjustment that arises in relation to a supply, acquisition or importation made during the representative's appointment by the representative.

The incapacitated entity will be liable for or entitled to amounts arising from transactions that do not fit within this scope (this may be the case where a receiver is appointed over one asset and the incapacitated entity continues to trade in its own right).

The IPA asserts that the GST legislation should also provide the following:

- The incapacitated entity (and not the representative) has any adjustments that the representative has under principle 2 that are attributable to a tax period that ends after the day the representative's appointment ends;
- The incapacitated entity, and not the representative, is liable for any GST payable on a taxable supply that the representative 'makes' during its appointment, to the extent that the incapacitated entity received consideration for the supply prior to the representative's appointment;
- The incapacitated entity, and not the representative, is entitled to the input tax credit for any creditable acquisition that the representative 'makes' during its appointment, to the extent that the incapacitated entity provided consideration for the acquisition prior to the representative's appointment.
- The representative, and not the incapacitated entity, is entitled to the input tax credit for any creditable acquisition that the representative makes during its appointment to the extent that the representative provided consideration for the acquisition. Where the incapacitated entity made an acquisition under retention of title arrangements, the representative is entitled to the input tax credit where it pays for the acquisition. In those cases, if the incapacitated entity has already claimed an input tax credit for that acquisition, it may be required to make an increasing adjustment; and
- The incapacitated entity, and not the representative, is liable for any GST payable on a supply the representative 'makes' to honour a voucher issued by the incapacitated entity — but only to the extent that the consideration provided for the representative's supply does not exceed the consideration provided for the incapacitated entity's supply of the voucher.

Section 444-70 in Schedule 1 to the Taxation Administration Act 1953 should be amended to ensure that where there are two or more representatives, other than jointly and severally appointed representatives, of the same incapacitated entity, the representatives will not be jointly and severally liable to pay any amount payable under an indirect tax law by any representative in relation to the incapacitated entity. Rather, each representative should only be liable to the extent that the supply, acquisition, or importation falls within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs.

The IPA submits that it is critical that the GST legislation makes it abundantly clear which entity has any resulting GST liability during incapacity. It is essential that the representative, or each representative if there is more than one, are left in no doubt which liabilities they have and which are the responsibilities of the incapacitated entity.

3. **End of an incapacitated entity's final tax period** – The tax period applying to any type of incapacitated entity at the time it becomes incapacitated should end immediately on the day that the entity becomes incapacitated. The IPA submits that the GST legislation be amended to provide for a concluding tax period for all forms of incapacitated entities and not just liquidations and receiverships (s 27-40, GST Act).

Many entities become incapacitated during or after a day of trading. If that tax period were to end on the day before the entity became incapacitated then the representative may become liable for GST on supplies made on the day of, but before, their appointment. In those cases, the IPA suggests that the Commissioner's systems need to be able to cater for the concluding tax period of the incapacitated entity ending on the same day that the first tax period of the representative commences, provided the representative can provide evidence of the time of its appointment during that day.

The IPA believes that the label "concluding tax period" is misleading and unhelpful in the context of incapacity. In some cases, the representative's appointment will end and the entity will resume trading, that is, it will no longer be incapacitated. Where a receiver is appointed over limited assets, the so called "concluding tax period" will be immediately followed by a tax period that constitutes the remainder of the tax period until the end of the month or the quarter. Consideration should be given to a label other than "concluding tax period" to correctly communicate the nature and effect of the period immediately prior to the appointment of the representative.

4. **GST Groups** - if a member of a GST group becomes incapacitated, the representative member of that group should be able to elect to have the tax period that applies to group members cease at the same time as the incapacitated entity's tax period ceases. However, it should ultimately be the representative of the incapacitated entity and not the representative member of the group who decides whether the incapacitated entity remains part of the GST group.

   The IPA submits that the current technical consequences of a group member becoming incapacitated need to be modified to achieve the following outcomes:

   - The representative member of the GST group can elect to have the incapacitated entity exit the group at the start of the tax period in which it became incapacitated;
   - The representative member of the GST group can elect to have the entire GST group's tax period end on the day that the entity became incapacitated;
   - Neither of these two elections effects the entitlement of the incapacitated entity to remain a member of the GST group. Rather, it should ultimately be the representative of the incapacitated entity and not the representative member of the group who decides whether the incapacitated entity remains part of the GST group;
   - If the representative of the incapacitated entity and the representative member of the GST group agree, the incapacitated entity can remain a member of the GST group for the remainder of the tax period and thereafter. However, the default position will be that the incapacitated entity will no longer remain a member of the GST group unless the representative of the incapacitated entity agrees; and
   - A clear quarantining of the GST liabilities of the incapacitate entity prior to the appointment of the representative.

5. **GST Returns for GST group members** - An individual that is appointed as a representative of two or more incapacitated entities should be able to elect to lodge one consolidated GST return per tax period (rather than a separate return for each incapacitated entity) if the incapacitated entities are members of the same GST group. This would be a formalisation of the current administrative practice (PS LA 2004/2 (GA)).

6. **Mortgagees in possession –** there is currently uncertainty around who has the GST responsibility where a secured creditor appoints a receiver to sell a secured asset. The law currently provides that a Mortgagee in Possession has the GST liability on sales of secured assets (Div 105, GST Act). However, it is not clear what the current legal position is where a receiver is appointed and the position might remain uncertain if our Recommendation 2 above is introduced. The entity which is to have the GST liability should be clearly identified. The IPA suggests that the legislation be amended to make it clear that the appointer of the receiver has the GST liability and the representative does not.

7. **Registration** – Representatives should be able to elect not to register for GST if they are not continuing to trade the incapacitated entity's enterprise but are merely selling the incapacitated entity's assets, including trading assets. If they do not register, the liability for any required adjustment for input tax credits claimed on the acquisition of those assets by the incapacitated entity should not be transferred to the representative. The current position is that the representative is required to be registered if the incapacitated entity is registered or required to be registered.

   The GST registration rules for representatives are not clear within Div 147 and the general registration provisions. Where an entity is GST registered at the time it becomes incapacitated, the likely result is that the representative is required to be registered. However, the Commissioner accepts in some circumstances that the representative can subsequently cancel registration based on whether it is carrying on an enterprise and its turnover.

   It is the IPA's view that the representative should be allowed not to register from the time of appointment if it concludes that it will not be carrying on an enterprise. Further, it is the IPA's view that it should be allowed not to register if its projected GST turnover (s 188-20, GST Act) is less than the registration turnover threshold (currently $75,000 in respect of commercial businesses). It should be made clear that the representative's projected GST turnover is calculated by disregarding the following supplies, per s 188-25:

   "(a) any supply made, or likely to be made, by you by way of transfer of ownership of a capital asset of yours; and
   (b) any supply made, or likely to be made, by you solely as a consequence of:
      (i) ceasing to carry on an enterprise; or
      (ii) substantially and permanently reducing the size or scale of an enterprise."

   Thus, a representative could decide not to register, if it so chooses, where the incapacitated entity will not further trade other than the sale of assets including trading stock by the representative solely as a consequence of its decision to cease to carry on the previous enterprise. If so, it is the IPA';s view that any increasing adjustment arising by virtue of Div 138 in respect of assets for which the incapacitated entity claimed credits, would be the liability of that entity and not be a liability of or transferred to, the representative.

The IPA submits that the definition of "representative" may need expanding to determine or simplify the registration requirement. For example, it is not necessarily clear that scheme administrators or controlling trustees fall within the current definition of "representative".

8. **Member's Voluntary Liquidations –** If the status of insolvency practitioners is changed in accordance with Recommendation 1 above, there will be ramifications for the in-specie distribution of assets to a shareholder. Currently, an in-specie distribution from a liquidator to a shareholder is not a taxable supply. However, the changes will mean that the distribution will be taken to have been made by the incapacitated entity to an associate, and thus will be a taxable supply.

   These issues need to be carefully considered and appropriate transitional arrangements put in place to provide for completion of Members' Voluntary Liquidations currently in progress. Currently, tax practitioners and liquidators will be advising clients on the basis that in-specie distributions are not subject to GST. Many Members' Voluntary Liquidations will have been commenced on this basis. It would be inequitable to change this position part way through a Members' Voluntary Liquidation.

   It is conceivable in the case of an asset rich but cash poor company that the representative may have a GST liability on the transfer, yet no assets are left in the entity with which to pay the GST or seek indemnity. A better result would be to include a rollover provision such as that in s 139-5(3) where assets relating to an enterprise that a deceased estate carried on are transferred to a beneficiary who intends to use the assets in an enterprise. As such, if the member is intending to use the asset in an enterprise, those assets will be able to be transferred with no immediate GST consequence.

9. **Incapacitated entity's GST compliance** – As far as possible, incapacitated entities should not have GST responsibilities during their period of incapacity including the lodgement of GST returns and the requirement to give notices to the Commissioner. It is the IPA's members' experience that GST compliance by incapacitated entities during the period of most representative's appointments is virtually non-existent. The incapacitated entity usually does not have the resources or records to undertake GST compliance. As far as possible, the incapacitated entity's legislated responsibilities need to be minimised to reflect this reality. The exception will be where the incapacitated entity is continuing to operate in its own right outside of the insolvency administration (ie. where there has been an appointment of a receiver to only some of the company's assets).

10. **Representatives' GST returns** – Regard should be given to waiving the requirement for representatives to lodge GST returns in particular circumstances especially when more than one representative has been appointed and the role of one representative is passive until the other representative's responsibility has been completed.

    The circumstances might include where:

    - The representative's net amount for the tax period is zero; and
    - it does not have any increasing adjustments that are attributable to the period; and
    - no GST for which it is liable, is attributable to the period.

11. **Indemnity for GST** - A representative should be indemnified for any payment it makes to meet its GST obligations. A representative should not be personally liable for the incapacitated entity's GST liabilities or adjustments (with the exception of those transferred to it under Recommendation 2 because they fell within the scope of the representative's responsibility or authority for managing the incapacitated entity's affairs).

    Even though a representative may be appointed to an incapacitated entity, in most but not all cases (such as where the assets are vested in the representative), the incapacitated entity retains both the legal and beneficial ownership of any property even though it can no longer deal with that property. As the funds received by the representative in such cases will still belong to the incapacitated entity, an indemnification clause will be required to ensure that the legal representative can use the incapacitated entity's assets to make GST payments to meet its GST obligations.

    Based on Recommendation 2, the IPA cannot identify circumstances where the representative might have the GST liability transferred to it for transactions where it did not receive consideration. However, the amended GST legislation should ensure that the representative's indemnity is not effectively worthless because it might have a liability (perhaps an increasing adjustment) transferred to it for which it did not receive cash or was not vested assets with which to pay that liability. It will be necessary to ensure that the GST legislation which provides for the indemnity does not conflict with or limit indemnities applying to the representative under other legislation.

12. **Representatives notifying the Commissioner of adjustments** – It is preferable that representatives should not be required to notify the Commissioner if the incapacitated entity has any increasing adjustments relating to pre-appointment supplies, acquisitions or importations. However, should this obligation to notify continue, representatives should not be personally liable for the GST even where they fail to make the notification. Failure to make the notification should be treated as a statutory compliance offence and not an event which triggers or transfers the underlying GST liability.

    As far as the IPA is aware, the s 147-20 notification requirement and liability transfer is unique to the Australian GST regime. The IPA is not aware of any other GST/VAT regime that has needed to impose such an onerous compliance burden and unwarranted liability transfer. Under corporation and insolvency law, it is the creditor's responsibility to amend its proof of debt to ensure accuracy. The IPA does not believe there is a legitimate policy reason to alter that general responsibility for certain GST adjustments. The IPA believes that it is a fundamental violation of the principles of equity and fairness for any such liability to be transferred to the representative.

    Notwithstanding the IPA's views, if the Board considers it necessary to impose the compliance responsibility upon the representative, the IPA believes that failure of the representative to provide notification to the Commissioner should be treated as a statutory compliance offence with an administrative or civil penalty of, say 5 penalty units (currently $550).

13. **Discretion to waive notification** - The Commissioner should be provided with discretion to determine particular instances in which GST liabilities and adjustments do not require notification. The Commissioner could, for instance, determine that notification is not required in instances where no dividends are payable to unsecured creditors or in relation to adjustments of less than a certain value.

14. **Frequency of notification** - Representatives should not be required to provide a notification under section 147-20 in relation to each adjustment or amount of GST or for each tax period. Rather, the representative should be allowed to provide one notification to the Commissioner prior to the declaration of a dividend to unsecured creditors. Alternatively, the notification could be required for any such period longer than a tax period that the Commissioner allows on a case by case basis. It would be preferable if the law clearly establishes when notification of adjustments is not required, with the Commissioner to have discretion in other circumstances.

15. **Application date for any legislative amendments** – In principle, any amendments should take effect in relation to net amounts for tax periods that start on or after the date of Royal Assent. However, representatives should be allowed to elect to continue with the current GST responsibilities for engagements that have commenced prior to the date of assent. Specifically in accordance with Recommendation 8, representatives appointed to Member's Voluntary Liquidations that have commenced prior to the date of Royal Assent should continue to be able to account for GST under the current legislation and ATO treatment.

16. **Input tax credit and bad debt adjustments when a dividend is paid to creditors** – The obligations upon a representative and the resulting calculations are extraordinarily complicated (refer GSTB 2003/1). Consideration should be given to a complete overhaul of the GST responsibilities of the bad debt adjustment process for representatives of incapacitated entities. A process which is easier to understand and carry out will lead to lower burden of compliance.

    The IPA submits that consideration be given to a fundamentally different approach where the incapacitated entity was accounting for GST on the non-cash basis. The GST position of its creditors/suppliers should not be overlooked. If those creditors/suppliers were accounting for GST on a non-cash basis, then they will have remitted GST to the ATO in respect of the amounts which constitute the incapacitated entities debts. The ATO remains GST revenue neutral as the incapacitated entity will have claimed the commensurate GST credits. It is only when the creditor/supplier writes off the debt that the ATO's revenue neutrality has been undermined. This will, in many cases be where a final dividend is declared amounting to less than 100 cents in the dollar of debt.

    The IPA questions whether it is in the communities' best interests to continue to treat the creditor's writing off a bad debt as triggering an increasing adjustment in the hands of the incapacitated entity. It is understood that in practice, the increasing adjustment does not yield significant revenue to the ATO. It has the effect of reducing the pool of funds available to other unsecured creditors. Even more insidiously, it may also has the effect of reducing the dividend payable to the ATO.

    Many members have reported to the IPA the considerable compliance burden placed on them by the increasing adjustment calculations. One only has to read and attempt to understand the bulletin GSTB 2003/1 to be fully aware of the complexity. The burden technically remains even where there are no assets left upon the representative's appointment. In those cases, the representative has to carry out the burden without being paid for his or her efforts.

    In cases where assets do remain, the representative's fee for services will of course incorporate the time taken to attempt to understand the GST principles, compile the necessary data, undertake the adjustment calculations and communicate the result to the ATO. Given the current personal liability held by representatives, the process is double checked and heavily supervised and external advice is often sought. The

real and substantial cost of complying with the increasing adjustment process has the effect of reducing the pool of funds available both to the ATO and to the other unsecured creditors. While the process may ensure that the eventual total revenue collected by the ATO is technically correct, the IPA questions whether the overall cost to the community may offset the revenue collected. It is noteworthy that New Zealand is content to ignore any technical GST shortfall in these circumstances. It is IPA's understanding that both in legislation and administration, New Zealand does not attempt to recover GST via increasing adjustment or other means where a creditor writes off the debt owing by an incapacitated entity where a final dividend is paid which is less than 100 cents in the dollar.

As an alternative, consideration should be given to requiring creditors to report to the ATO the relevant customer and amounts of bad debt write-offs on taxable supplies. Armed with that information, the ATO would be able to amend its own proof of debt in respect of the incapacitated entities thus removing some of the compliance burden from the representative. Arguably, in many insolvencies creditors are in a better position to be able to report this information that the representative due to poor record keeping by the incapacitated entity.

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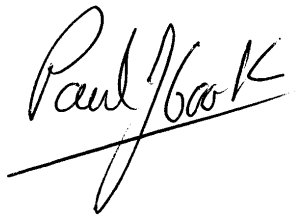
The IPA is available to work with the Board of Taxation to achieve an appropriate outcome in relation to this Review. In the meantime, should you have any queries in relation to above comments, please do not hesitate to contact Kim Arnold on (02) 4283 2402.

Yours faithfully
Insolvency Practitioners Association



Paul Cook
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