The Institute of Chartered Accountants in Australia

John Hawkins
The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

12 February 2010

Email: economics.sen@aph.gov.au

Dear Mr Hawkins,

Senate Inquiry to investigate the role of liquidators and administrators

The Institute of Chartered Accountants in Australia (the Institute) welcomes the opportunity to make a submission to the Senate Economics Committee on their Inquiry into role of liquidators and administrators, their fees and their practices, and the involvement and activities of the Australian Securities and Investments Commission, prior to and following the collapse of a business (Inquiry).

The Institute is the professional body representing Chartered Accountants in Australia. Our reach extends to more than 64,000 of today's and tomorrow's business leaders, representing more than 52,000 Chartered Accountants and 12,000 of Australia's best accounting graduates who are currently enrolled in our world class Chartered Accountants postgraduate program. Our members work in diverse roles across commerce and industry, academia, government, and public practice throughout Australia and in 110 countries around the world. A large proportion of registered liquidators and administrators are members of the Institute.

Overall the majority of the insolvency profession operate at an appropriate standard and recent investigations into some members of the profession represent the minority. Insolvency practitioners operate in an environment where a business is in financial difficulty. There may be uncertainty, anger and stakeholders fearing financial loss. The practitioner becomes the public face of this failed company and the point of contact for the stakeholders. The practitioner can therefore become the target of negative feelings from stakeholders about the situation.

However, the insolvency profession, like all professions, should be subject to continual independent review, be clearly accountable and respond to the changing conditions in the business environment. The current law and regulatory environment applicable to insolvency practice is sufficiently detailed.

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Our detailed submission, which follows, recommends that the Australian Securities and Investments Commission (ASIC) create an inspection program, similar to that in place for registered company auditors, for registered liquidators.

This would be a pro-active approach to monitoring the performance of registered liquidators. This would enhance the current mainly reactive approach, where investigations are commenced when ASIC have a suspicion there has been a contravention of the law.

Our submission also includes recommendations to review the use of enforceable undertakings and the Companies Auditors and Liquidators Disciplinary Board (CALDB) process. We are supportive of ASIC referring matters to the CALDB, however we are aware that this process is not operating effectively. As a result, ASIC and practitioners are increasingly defaulting to using enforceable undertakings (EU) to resolve matters. We are concerned at this trend as EUs lack the transparency and proper accountability of a CALDB tribunal or Court. We recommend that certain matters may be more appropriate to be dealt with by an open, independent process. We consider that this process would enable the right outcomes in a timely manner.

We understand that this Inquiry was partly initiated following ASIC's investigation into the affairs of Mr Stuart Ariff. Mr Ariff is no longer a member of the Institute.

It is important to note that the Institute brought Mr Ariff to account before its own disciplinary tribunal, the Professional Conduct Tribunal, using the evidence that it was legally able to use at the time. The Tribunal was not allowed to base its decision on various unproven or untested allegations concerning Mr Ariff's conduct in other matters. The Institute subsequently became aware that ASIC commenced litigation against Mr Ariff in relation to various liquidations and administrations, culminating in him being banned as a liquidator in 2009. The Institute promptly thereafter procured Mr Ariff's resignation and published his resignation.

The Institute is a member body and is not a statutory authority, regulatory body or a court of law. It does not have subpoena powers to compel a member to disclose evidence.

In the Ariff case, the Institute acted in accordance with independent legal advice concerning matters being investigated by ASIC. The Institute has been advised to firstly await the outcome of any ASIC investigation and any subsequent court action. We have included details of our disciplinary procedures against Mr Ariff in our submission.

If you require further information on our submission please contact me at the Institute on 02 9290 5598 or at lee.white@charteredaccountants.com.au.

We would be pleased to elaborate on our views expressed in this submission in a hearing before the Committee.

Yours sincerely,
(...)

Lee White
General Manager, Leadership & Quality

Submission from the Institute of Chartered Accountants in Australia

SENATE INQUIRY INTO THE ROLE OF LIQUIDATORS AND ADMINISTRATORS, THEIR FEES AND THEIR PRACTICES, AND THE INVOLVEMENT AND ACTIVITIES OF THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION, PRIOR TO AND FOLLOWING THE COLLAPSE OF A BUSINESS.

Summary of recommendations

1. Review of the registration process for a liquidator and an official liquidator.
2. Create an ASIC inspection program, similar to that in place for registered company auditors, for registered liquidators.
3. The creation of an open and independent process is considered by the Inquiry to deal with matters of a certain size rather than using an enforceable undertaking or CALDB tribunal.
4. Review the separation of duties between ASIC and the Office of Fair Trading such that all complaints against registered liquidators are investigated by ASIC, regardless of the type of body involved.

Role of insolvency practitioners

The insolvency profession operates in a difficult environment. They are only involved when businesses or individuals are in financial difficulty. The practitioner must work hard to quickly get a thorough understanding of the business and its current situation in order to get the best end result for the business, its creditors and its employees.

Insolvency practitioners take on wide ranging responsibilities and full control of the business including employees, assets, financial records and the business operation. They have to get an understanding of the business as quick as possible, morale may be low with employees so it's a difficult time for the business. The law does not require an insolvency practitioner to be a member of a professional accounting body but in reality most are members.

Insolvency practitioners operate in an environment where a business is in financial difficulty. There may be uncertainty, anger and stakeholders fearing financial loss. The practitioner becomes the public face of this failed company and the point of contact for the stakeholders. The practitioner can therefore become the target of negative feelings from stakeholders about the situation. It is important for stakeholders to understand the duties and responsibilities of the practitioner. They also need to separate the issues that the directors of the failed company are responsible for and recognise that the practitioner is not responsible for these occurring.

The media has tended at times to portray insolvency practitioners as people without hearts. We note that many insolvency practitioners often obtain the best outcome for all parties involved and must take into account the specific situation. We would like the committee members to be aware that in many cases in recent years, insolvency practitioners have personally taken behind the scenes action to ensure that Government agencies are made aware early of the plight of some employees. This helps to ensure that assistance can be made available quickly for employees and their families, particularly for those in companies that have collapsed close to Christmas. These behind the scenes actions have helped lessen some of the pain that many people have felt during a period of understandable uncertainty. We also note many insolvency practitioners involved in complex and large cases are unable to take leave, including over the recent Christmas period and will often work over weekends. This is due to the need to find a solution to the current financial position of the business as soon as possible.
In all professions, there are some members who do not operate to the same high standards as the others. There can be no way to completely avoid this, however it is important that there are good processes in place for the registration of insolvency practitioners initially and for the ongoing review of their performance. Additionally, there should be adequate processes in place to deal with complaints against registered liquidators when they arise.

Terms of reference

We note the Senate Economics Committee has broad terms of reference for the Inquiry. However, we note that whilst these cover the roles of liquidators and administrators, they exclude receivers. Receivers may also be involved prior to and following the collapse of a business. The term depends on whether the company is in voluntary administration, receivership or liquidation.

The Australian Securities and Investments Commission's (ASIC) website defines these differing methods as follows:

- The role of the voluntary administrator is to investigate the company's affairs, to report to creditors and to recommend to creditors whether the company should enter into a deed of company arrangement, go into liquidation or be returned to the directors.
- Liquidation is the orderly winding up of a company's affairs. It involves realising the company's assets, cessation or sale of its operations, distributing the proceeds of realisation among its creditors and distributing any surplus among its shareholders. A creditor's voluntary liquidation is a liquidation initiated by the company. Court liquidation starts as a result of a court order, made after an application to the court, usually by a creditor of the company.
- A receivership is an administrative procedure by which a receiver is appointed to administer property. The appointment may be limited to the protection of one particular item of property or it may extend to general control over all of the property and affairs of a corporation. A receiver may be appointed privately or by the Court.

We consider that for completeness, the Inquiry should also include receivers in the terms of reference. As the Inquiry is looking at the profession from the interests of all stakeholders, then the choices or decisions that a receiver makes may directly impact on the return or otherwise to unsecured creditors. Receivers may be appointed by and report to the secured creditor, however quite often receiverships and administrations or liquidations run concurrently. Therefore the manner in which the receiver has undertaken their role should be given as much emphasis as with administrators and liquidators.

We note that ASIC maintains a register of liquidators and official liquidators. Registered liquidators are people who have a recognised qualification and practical experience in the winding up of bodies corporate and are able to satisfy ASIC that they are capable of performing the duties of a liquidator. Official liquidators are people who are registered liquidators and who may be appointed by a court to a compulsory liquidation.

We recommend that the registration process is reviewed to ensure the skills and qualifications required of insolvency practitioners are of the high standard required by the relevant laws and regulations and reflect the current business environment. We consider that official liquidators could be expected to demonstrate additional experience of court for their registration. We note that ASIC currently checks with the Institute as to whether a particular member is in good standing prior to registering them as a registered liquidator and we recommend that this practice continue.

We also consider that qualifications alone may not indicate the professional has the skills and experience that is required of an insolvency practitioner. Practitioners need to apply and communicate the legislation to company directors and other stakeholders when handling an insolvency administration and often make difficult decisions. We understand that the Insolvency and Trustee Service Australia (ITSA) conducts panel style interviews for Registered Bankruptcy Trustee applicants. We consider that including an interview as part of the registration process for liquidators would strengthen it. An interview would require the applicant to respond to a range of practical questions, so that they can demonstrate they have the necessary understanding of the legislation deal with the varying issues that may arise.

Additionally, in keeping with the professional nature of the Chartered Accountant designation, members of the Institute are expected to keep abreast of current business practice and maintain a timely focus on developments in their area of employment. Members obliged to undertake training and development are required to achieve a minimum of 120 qualifying hours (at least 90 hours of formal plus up to 30 hours of technical reading) over a three year period. At least 20 hours (including no more than 10 hours of technical reading) must be completed annually. If the member is a registered liquidator, at least 40% of the total minimum training and development hours must be

dedicated to specialised insolvency training. The Institute conducts random audits of members to ensure compliance with these requirements.

ASIC inspection

We have seen the insolvency profession evolve and develop over time. Like the accounting profession as a whole, it should be subject to continual independent review and improvement and respond to the changing conditions in the business environment. This improves the reputation and credibility of the majority of the profession and at the same time identifies those who are not complying with the relevant law and regulations. The need to continually improve is true for many professions such as, for example, the medical profession and, as we have seen firsthand, in the audit and assurance profession.

There have been many changes in the audit landscape over the last few years. 2004 saw the introduction of the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act (CLERP 9) which changed the requirements for auditor independence and required auditor rotation for the first time. ASIC was granted the power to impose conditions on the registration of Registered Company Auditors. The Auditing and Assurance Standards Board (AUASB) issued legally enforceable Auditing Standards for financial reporting periods commencing on or after 1 July 2006.

Currently under the *Australian Securities and Investments Commission Act* (ASIC Act) Part 3, Division 1, ASIC may investigate registered auditors and liquidators where they have reason to suspect there has been contravention of the law. Additionally, Part 3, Division 3 gives ASIC powers to inspect the books of corporations and auditors. Audit records may be inspected for the purposes of ascertaining compliance with the *Corporations Act 2001* (Corps Act) audit requirements or overseas audit requirements.

The ASIC Audit Regulation Team helps maintain the standard of quality and independence in the audit profession. The inspection program concentrates on the audit firms' compliance with auditing standards, as well as their independence and quality control systems. ASIC review aspects of selected engagement files to ensure that all key components that contribute to an audit opinion have been adequately considered. The reviews are not designed to find minor instances of noncompliance. ASIC regularly publishes the results publically of their inspection program to better inform firms, the investing public, companies, audit committees and other interested stakeholders. We note that this is a pro-active approach to ensuring the continued quality and performance of registered auditors. Currently registered liquidators are only investigated if ASIC have a suspicion there has been a contravention of the law.

We also understand that office of the Inspector-General in Bankruptcy, Regulation and Enforcement within ITSA have an annual inspection program for their Registered Trustees in Bankruptcy and they complement their file reviews with an information and training session for trustees. We recommend that this be considered as part of the ASIC inspection of registered and official liquidators. We note that a key concern relating to administrations and liquidations is the length of time taken to complete them. We consider that a key focus for determining the file review could be administrations over two years old.

To this end, we recommend that ASIC conduct a regular inspection program of registered and official liquidators. We recommend that ASIC assess the Inspector-General's program for suitability and adaptability to the corporate insolvency practice. The Institute and the Insolvency Practitioners Association could also provide guidance to ASIC in this regard.

ASIC powers

ASIC can deal with a breach of the law by a registered auditor or liquidator in one of the following three methods under the ASIC Act and Corps Act.

1. refer the matter to the Companies Auditors and Liquidators Disciplinary Board (CALDB)
2. an enforceable undertaking (EU)
3. court action – either criminal or civil

Under methods one and three, the practitioner being investigated receives natural justice, transparency and accountability in the context of well-tested legal principles applied by experts.

The role of the CALDB is to deal with applications made by ASIC or the Australian Prudential Regulation Authority (APRA) for a registered auditor or registered liquidator to be dealt with by the CALDB under section 1292 of the Corps Act. CALDB members are appointed by the Treasurer based on the requirements of the ASIC Act and have a breadth of knowledge and experience encompassing the law, accountancy and business.

The CALDB directly notifies the Institute, pursuant to s.1296 (1B) of the Corps Act, of their decision and the reasons for the decision. This can be used by the Institute in its own disciplinary procedures. Likewise, once court action is completed, the Institute can use the judgement where appropriate to found a disciplinary hearing when it becomes a matter of public record.

We suggest the Inquiry review the results of three recent court/tribunal cases in terms of the outcomes and implications for insolvency practitioners. First, the High Court of Australia decision in the case of Albarran v Members of the Companies Auditors and Liquidators Disciplinary Board (24 May 2007). The liquidators challenged the ability of the CALDB to suspend registrations of liquidators. We note that the case includes a good description of the roles of liquidators and the CALDB in the judgement. The second case is the decision in the Administrative Appeals Tribunal of Australia (see Gould and Companies Auditors and Liquidators Disciplinary Board and Anor [2008] AATA 814, 12 September 2008). The third case is the appeal from that decision to the Federal Court of Australia (see Gould v Companies Auditors and Liquidators Disciplinary Board No.3 [2009] FCA 1017, 11 September 2009).

We note that it is critical that the CALDB process operates effectively, efficiently and focuses on important matters. Therefore referrals should not be made to the CALDB for inconsequential matters as this might negatively impact how the CALDB process is perceived. The CALDB should be reserved for dealing with auditors and insolvency practitioners who have made serious breaches of the Corps Act. Minor breaches relating to administrative matters should be dealt with by other means, including the use of an EU (as noted above) or an alternative open and independent process.

An EU provides no detailed description of the evidence which has been tested. Typically ASIC expresses its concerns about the accountant in the EU and the accountant does not admit or disagrees with the concerns. This is in contrast to a court of law or a tribunal (CALDB) where ASIC evidence is tested. Nor does an EU only arise from investigations where the professional typically admits guilt or breach of law. ASIC and practitioners are defaulting to use EUs to avoid the lengthy and costly legal process involved in CALDB referrals (their length and complexity being linked to the submissions and amended submissions filed by ASIC) or court cases. They may also be preferred by some professionals as they may limit the adverse publicity and hence protect the reputations of partners and their firms.

However, there is a lack of transparency and accountability in the EU process and members have expressed some concerns in this process. The EUs do not contain a full description (or a copy) of the evidence ASIC relied upon. As an EU does not usually provide any admittance of guilt or breach by the member, the EU, in the absence of the actual evidence relied upon cannot be used by the Institute to subsequently discipline their members.

We recommend that an open and independent process is considered by the Inquiry to deal with matters of a certain size. This process would deal with these matters more transparently than an EU and in a more timely manner compared to the CALDB tribunal. We consider the EUs should be reserved for matters where the practitioner has admitted guilt.

Independence requirements for insolvency practitioners

In 2009, the Accounting Professional & Ethical Standards Board (APESB) issued mandatory independence requirements that will impact insolvency practitioners who are members of the three professional accounting bodies. The standard, *APES 330 Insolvency Services* requires accountants to determine any threats to their independence prior to accepting an insolvency appointment and to complete a declaration covering independence, relevant relationships and indemnities.

Accountants are also now prohibited from accepting insolvency appointments involving referral or recurring commissions or spotters' fees. It is effective from 1 April 2010, with early adoption permitted, and will be enforced by the three Australian professional accounting bodies. The IPAA's code of professional conduct is also aligned with APES 330.

We refer the Inquiry to a Federal Court of Australia case (see Dean-Willcocks v Companies Auditors and Liquidators Disciplinary Board [2006] FCA 1438 8 November 2006). This is considered the authority for the proposition that courts and the CALDB can take account of codes of conduct and professional standards in determining whether there is a breach by a liquidator of the Corps Act requirement s1292 (2). This requirement relates to the failure of a registered liquidator to properly and adequately perform their duties.

The Institute rigorously enforces the standards, including the Code of Ethics and the professional standards. We seek enforcement of APES 330 by our members working in the insolvency profession.

ASIC and Office of Fair Trading

The separate duties of ASIC and the NSW Office of Fair Trading (OFT) have been the subject of recent media articles. A liquidator registered by ASIC may be involved in external administration of both companies and co-operatives (such as clubs). However, we note that whilst complaints against the liquidator relating to company administrations are dealt with by ASIC, those made relating to co-operative administrations are referred to the OFT. ASIC is responsible for the registration of liquidators and has the skills and experience to investigate these complex matters.

We recommend that ASIC's role is expanded to deal with all complaints (with the exception of fee disputes) against registered liquidators, regardless of whether the complaint relates to work performed on a company, co-operative or other type of body. This would also avoid any duplication of work by government bodies, where a registered liquidator is investigated both by ASIC and the OFT.

The Institute disciplinary process and Mr Stuart Ariff

It is important to note that the primary purpose of the Institute's disciplinary process is to protect the reputation of the Institute and the Chartered Accountant designation rather than to punish individual members. We do not have legal power to order the payment of compensation or any other remedy seeking redress on behalf of the community, nor to punish offenders other than through membership-related sanctions. Further information on the Institute's disciplinary procedures is included in Appendix A.

The Institute is a member body and is not a statutory authority, regulatory body or a court of law. It does not have subpoena powers to compel a member to disclose evidence.

We understand that this inquiry was partly initiated following ASIC's investigation into the affairs of Mr Stuart Ariff. Mr Ariff is no longer a member of the Institute. We have included the outcome of our disciplinary procedures against Mr Ariff as published on our website in Appendix B.

It is important to note that the Institute brought Mr Ariff to account before its own disciplinary tribunal, the Professional Conduct Tribunal, using the evidence that it was legally able to use at the time. The Tribunal was not allowed to base its decision on various unproven or untested allegations concerning Mr Ariff''s conduct in other matters. At the tribunal in February 2008, the only evidence available to the Institute was the NSW Supreme Court decision in the Wambo Coal Pty Ltd case. This was a civil case and the Supreme Court did not order a ban against Mr Ariff and hence he remained a registered liquidator with ASIC. The Institute's Professional Conduct Tribunal sanctions were a severe reprimand and a fine of $20,000.

In the Ariff case, the Institute acted in accordance with independent legal advice concerning matters being investigated by ASIC. The Institute has been advised to firstly await the outcome of any ASIC investigation and any subsequent court action. We cannot bring anyone to a disciplinary hearing based on unproven allegations (such as those in the media). We must be objective and independent in assessing when a member should be the subject of disciplinary action and must always act consistently and in accordance with the law. We must accord natural justice to our members and apply the presumption of innocence until proven guilty.

The Institute regularly monitors the media and reviews complaints for potential breaches of its by-laws and regulations by members. As a result of the allegations in the media against Mr Ariff, the Institute contacted ASIC to confirm whether they were investigating him. However ASIC would not provide any information to the Institute. The Institute encouraged ASIC to issue a media release to inform the general public on its handling of the complaints against Mr Ariff as it was a matter of public interest. ASIC revealed their investigation into external administrations under his control on 13 December 2007 (ref 07-324 Administrator replaced following ASIC application).

The Institute was not a party or a witness in any of the ASIC litigation against Mr Ariff. We subsequently became aware of the NSW Supreme Court order that Mr Ariff was prohibited for life from holding the office of official liquidator, registered liquidator, provisional liquidator, voluntary administrator, administrator of a deed of company arrangement or controller when it became a matter of public record in August 2009. The Institute then obtained and publicised Mr Ariff's resignation as a member.

The disciplinary process of professional bodies, such as the Institute, has constraints as noted above. ASIC and the courts have much wider ranging powers to investigate such matters. The Institute must await the outcome of these investigations before initiating its

own investigations to ensure members are accorded due process and the principles of natural justice are abided by. Additionally, the Institute can currently only use the outcome from ASIC's investigation when that becomes a matter of public record following the court case or CALDB hearing. As noted earlier, we recommend the introduction of an open and independent process to provide swifter and more transparent resolutions to ASIC investigations. The process would also be more accountable as the results of the open and independent process could be used by the Institute in its disciplinary process.

The Institute's Quality Review Program

The Institute aims to serve our members and the public in many ways. Upholding the integrity of the designation 'Chartered Accountant' through the quality review program is an important aspect of this. The Institute's quality review program, ensuring practitioner members maintain a consistently high standard of quality and service to their clients, is therefore a key feature of our co-regulatory framework, together with high entry standards, training and development requirements, and comprehensive professional rules and standards. We have provided further information on our Quality Review Program in Appendix C.

In relation to insolvency engagements we assess whether the practice's quality control policies and procedures are being implemented in accordance with *APES 320 Quality Control for firms* and *APES 330 Insolvency Services* (effective from 1 April 2010) replacing the current *APS 7 Statement of Insolvency Standards.*

Remuneration of Insolvency Practitioners

We note that the Inquiry terms of reference also include the fees of liquidators and administrators. As noted earlier, the role of an insolvency practitioner is difficult. It requires significant skill to take control of a company in financial difficulty and obtain the best outcome for all stakeholders. The members of the team involved in an administration or liquidation are usually highly skilled and experienced. To provide an analogy to the accounting profession, the team would be similar to that involved in a merger and acquisition, rather than an audit.

Liquidations and administrations are conducted in an environment where there are limited or no funds available. Company stakeholders hope to receive funds from the process. However, as liquidators are paid first from the available funds, this can create some negative feelings about their remuneration. It is important to note that in some instances, liquidators fees are not paid or only partly paid if sufficient funds are not available.

We also note that there are certain administrative procedures and filings required of a practitioner as part of a liquidation or administration. These procedures do not directly impact the level of funds available to pay creditors. Therefore, creditors and other stakeholders may perceive that fees are being paid when they cannot see any results of the work performed. We consider that the education of stakeholders in all aspects of the process and the costs involved at each step is important in managing their expectations in this regard.

In the case of liquidation and administrations, a practitioner requires specific approval of their remuneration by creditors or by the Court. This will only be given after full disclosure of comprehensive descriptions of work performed by grade of staff, time charged and rates of remuneration applied, together with the total amount requested for approval.

In the case of receivership, we understand the practitioner's remuneration will usually be specified in the debenture charge and/or in the appointment and indemnity documents

between lender (creditor) and practitioner. It will usually be subject to regular scrutiny and approval by the lender (creditor) before remuneration can be drawn. The receiver's remuneration can also be subject to review by the Court by a liquidator or administrator appointed to the company in receivership.

The Insolvency Practitioners Association of Australia has published a Code of Professional Practice for Insolvency Practitioners detailing best practice to be followed when requesting approval of remuneration.

We are confident that market forces, coupled with the approval and review processes referred to above, will ensure that insolvency practitioner remuneration continues to be appropriate for the work performed and risks assumed by the practitioner in performing that work. In addition, the Australian Competition and Consumer Commission (ACCC) has wide powers to ensure that all professions do not engage in anti-competitive behaviour and that fair price competition continues to exist in the market place for professional services including insolvency services.

Appendix A – Institute disciplinary procedures

Why have a Professional Conduct function?

The Institute is committed to enhancing and promoting the reputation and role of Chartered Accountants in Australia. To do so, it sets the highest ethical, technical and professional standards of conduct and performance for current and future members.

The Professional Conduct section is the Institute's disciplinary arm that enforces those standards. It protects the integrity of the Chartered Accountant designation by investigating complaints and other issues relating to members' conduct, and, where appropriate, imposing sanctions against those who breach the standards.

The Institute is not a regulator or a court. Its role is to set and maintain high standards among members to ensure that holders of the Chartered Accountant designation conduct themselves properly at all times and do not bring the Institute and thereby its other members into disrepute. It is necessary for the Institute to call its members to account when issues of concern arise, in order to protect its own reputation and those of its members.

Regulatory framework

There is no single body responsible for regulating the accounting profession in Australia. Those bodies that are involved in the regulation of the various arms of the profession and other activities in which accountants may be engaged appear in the table below.

Regulatory body	Who they regulate
Australian Securities and Investments Commission (ASIC)	Auditors and liquidators – through the Companies Auditors and Liquidators Disciplinary Board (CALDB) Financial planners Company directors
Tax Agents Boards	Tax practitioners
Australian Prudential Regulation Authority (APRA)	Auditors/trustees of superannuation funds Directors and senior managers of insurance companies
Insolvency Trustee Service Australia (ITSA)	Trustees in bankruptcy

It is important to note that the primary purpose of the Institute's disciplinary process is to protect the reputation of the Institute and the Chartered Accountant designation rather than to punish individual members. The Institute does not have legal power to order the payment of compensation or any other remedy seeking redress on behalf of the community, nor to punish offenders other than through membership-related sanctions.

Financial and criminal sanctions are the preserve of the regulators and the courts, which have wider powers – such as subpoenaing witnesses, compelling production of written evidence and providing financial compensation. However, the Institute investigates members who are the subject of adverse decisions by regulators and the courts, irrespective of whether anyone has lodged a complaint with the Institute. It refers relevant cases to the Professional Conduct Tribunal for determination. In accordance with legal advice received by the Institute, its own disciplinary process must wait until the regulatory and court process has been finalised.

The tribunal process

The Institute's disciplinary processes are fair, rigorous and independent. Serious breaches of by-laws and regulations are subject to independent hearings by the Professional Conduct Tribunal. If the member against whom a finding has been made, or the Institute President, is dissatisfied with the decision, he/she can appeal to a separate Appeal Tribunal. Tribunal hearing outcomes are published in the printed and online versions of the Institute's Charter magazine, and in the Professional Conduct section of the Institute's website. This helps educate other members as well as demonstrating that the disciplinary process is transparent. In significant cases, the Tribunals may also publish reasons for their decisions.

Both Tribunals must meet strict professional guidelines when hearing cases, including a Code of Conduct. Under the Institute's by-laws, tribunal members, who are appointed by the Board, comprise both senior members of the Institute and non-members to represent the public interest. Institute members appointed to serve on the Tribunals represent all aspects of the profession, including large, medium and small firms, and members in commerce and academia. When a panel is selected to hear an individual case involving technical issues, care is taken to ensure that at least one panel member has expertise in that particular area of practice or specialisation. Lay representatives were introduced nearly 20 years ago, come from a wide variety of business and professional backgrounds, and include lawyers, company directors, stockbrokers and academics.

The Institute closely watches any accredited organisation or member who has been the subject of media speculation. Any members who breach the Institute by-laws and/or ethical standards will be referred to a disciplinary hearing, after the regulatory investigations and any court hearings are determined. It is important that pending a hearing, despite any community anger or concerns about financial loss, members are accorded due process and the Institute must abide by the principles of natural justice.
The Accounting Professional and Ethical Standards Board (APESB), a body which is independent from the Institute, is responsible for setting and reviewing all ethical and professional standards which members are required to observe. The Institute regularly engages with the APESB and provides feedback on the implementation of standards, to ensure that they are clear and effective.
Compliance with Institute by-laws, ethical standards and other standards is extremely important for all members.

Even in periods of high pressure it is imperative that members comply with their ethical obligations. The courts, the Companies Auditors and Liquidators Disciplinary Board (CALDB) and the Institute all play a role in securing the enforcement of the spirit and the letter of the Code of Ethics issued by the APESB.

Types of sanctions

Sanctions are designed to reflect the impact of the member's actions on the reputation of the Institute and its members rather than to punish the individual member. The Professional Conduct Tribunal can impose one or more of a range of sanctions, including:

> Exclusion from membership of the Institute (removing the right to be a Chartered Accountant), which is the ultimate sanction. This is appropriate if the member has demonstrated that he/she is no longer fit and proper to be a Chartered Accountant and that continued membership would bring discredit on all other members and the Institute
> Cancellation of membership for a period of up to five years
> Withdrawal of the member's right to engage in public practice
> Imposition of fines of up to $100,000
> Reprimands and severe reprimands
> Imposition of other sanctions, such as remedial training or an additional quality review of the member's practice.

The Institute's role

Under the Australian professional and regulatory framework any individual can provide accountancy services. A licence is required from a regulatory body to provide certain specific services, such as company audits or acting as a tax agent, but a professional membership is not mandatory.
If a member is excluded from membership of the Institute, that individual can no longer use the Chartered Accountant designation but can continue to provide accountancy services. Only action by ASIC or the Tax Agents Board which cancels their registration will prevent members from practising as company auditors, liquidators, or tax agents.
Given the limited powers of the Institute, its policy – based on legal advice – is to await the completion of an investigation by the statutory body and any subsequent disciplinary or legal action before taking disciplinary action itself.

Future

In 2009 – 2010, the Institute will continue its focus in the following areas:

> Quality of presentations to the Tribunals, particularly on increased engagement in debate in an effort to foster better outcomes in Tribunal decisions
> Improved complaints handling, through registration and tracking of all complaints, as well as helping members identify situations where they may find themselves subject to an investigation by the Institute
> Closer communication and liaison with major stakeholders and regulators including ASIC, CALDB, ATO, APRA, IPA and other professional accounting bodies, to promote a more integrated investigative and disciplinary framework
> Member education regarding compliance with the spirit and the letter of the Institute's Code of Ethics. Increased emphasis on the importance of members keeping up-to date with standards
> Continued promotion of the dispute resolution toolkit in order to facilitate early resolution of client difficulties or problems wherever possible
> Monitoring the effectiveness and transparency of its disciplinary procedures, including:
> Sharing relevant information on disciplinary processes, issues and trends with its counterparts in the Global Accounting Alliance (GAA)
> Ensuring that it meets its obligations under the IFAC *Statement of Membership SMO 6: Investigation and Discipline*
> Working with a variety of regulators and stakeholders to ensure that the overall regulatory and professional framework continues to meet the needs of business and the broader community.

Appendix B - Institute disciplinary procedures against Stuart Karim Ariff

12 February 2008 - Stuart Karim Ariff CA of New South Wales

The Tribunal found a case established that Mr Ariff was liable to disciplinary action in accordance with:

1. By-law 40(e), in that in the New South Wales Supreme Court in Wambo Coal Pty Ltd v Stuart Karim Ariff & 1 Or (2007) Mr Justice White found that:

   (a) as the liquidator of Singleton Earthmoving Pty Ltd ("Singleton") he was liable to account as constructive trustee for certain moneys received from the plaintiff, with judgment being given against him for $18,150 together with interest.

   (b) he had sworn affidavits that he believed that all money received from the plaintiff had been applied to money owing by the plaintiff to Singleton, when he knew that this was not the case.

   (c) he had also sworn that Singleton's MYOB ledgers were kept up to date and were generally accurate, when this was not true.

   (d) having found one document which provided a plausible basis for the retention of the moneys, even though he knew the document had not been kept up to date, he wilfully and recklessly failed to make further inquiries for fear of learning that which he did not want to know.

2. By-law 40(j), in that his acts, omissions and defaults which lead to the judgment in 1. above and criticisms of his conduct by Mr Justice White, bring or are likely to bring discredit upon Mr Ariff, the Institute and the profession of accountancy.

The decision of the Tribunal was that Mr Ariff be severely reprimanded, fined $20,000 and required to pay $800 plus GST towards the costs of the disciplinary action. The Tribunal also ordered that notification of its decision be given to appropriate professional bodies and regulatory authorities.

Resignation

On 18 August 2009, by order of the Supreme Court of New South Wales, Mr Ariff was prohibited for life from holding the office of official liquidator, registered liquidator, liquidator, provisional liquidator, voluntary administrator, administrator of a deed of company arrangement or controller.

Under the Institute's By-laws a finding of this nature is grounds for disciplinary action.

At the Institute's instigation Mr Ariff submitted his resignation as a member. Although the Institute has the power to decline to accept the resignation of a member whose conduct may become the subject of professional conduct proceedings, it has been decided in the circumstances to accept Mr Ariff's resignation with immediate effect.

Appendix C – The Institute's Quality Review Program

Role of the Quality Review Program

The Program is a key feature of the co-regulatory framework in Australia. It assesses whether our members in practice have the quality control policies and procedures in place to ensure that their work complies with professional standards and regulatory requirements. The appropriateness of the opinions issued, or the advice provided, by members is not assessed during this process.

The Institute's quality review process identifies issues of non-compliance in individual practices. Although we do not identify individual practices, we summarise trends and results from reviews. Where we find non-compliance occurring for the same standard/regulation in a number of practices, we focus our efforts to educate the wider membership on how to comply.

In the interests of transparency we report our findings to our members, the regulators and standard setters we work with, and the general public.

The Program is a necessary condition of the Institute being recognised as a professional accounting body that represents Chartered Accountants both in Australia and internationally.

The Program also contributes to the Institute's obligations under professional standards legislation in respect of the limitation of liability schemes. As part of these schemes' conditions, the Institute undertakes to monitor and improve the standards of professional work undertaken by members. The Program assists the Institute to fulfil that obligation.

Who is reviewed?

Members who hold a Certificate of Public Practice (CPP) are required to undergo the Quality Review Program from time to time in accordance with the policies and procedures laid down for the operation of the Program. This is a requirement of Regulation 715.1 of the Institute's regulations.

A member's CPP may be suspended by the Institute's Board for not cooperating with the Program in accordance with Regulation 715. Suspension prevents members from continuing to practice as Chartered Accountants. If they continue to practice, they are referred to the Institute's disciplinary processes for investigation. During this year, a number of members, who did not wish to undergo a review, resigned their membership of the Institute. A condition of readmission to membership is successful completion of a quality review.

How often are practices reviewed?

All practices that sign off on audits requiring registered company auditor (RCA) registration are reviewed at least once every three years. This does not apply to a sole practitioner holding a concessional CPP at a one-third rate as they are subject to a self-assessment review. Some practitioners holding a full CPP who are not RCAs and with gross fees under $50,000 are also eligible to request a self-assessment review. Holders of a concessional CPP at a nil rate are excluded from the review process.

All other practices are reviewed once every five years, including practices with an RCA but not conducting RCA audits.

If a practice is selected for review on a three-year cycle but does not conduct any audits requiring sign-off by a RCA, the practice may request a deferral for two years by providing supporting documentation to the Institute, including an ASIC Annual Statement confirming that these audits have not been conducted.

Selection for review is in no way a reflection on a practice. Practices are selected for review approximately three or five years from the date their previous Institute review report was issued. New practices are randomly selected for review.

What is a Quality Review?

The Program is a quality assurance process designed to monitor whether our members have the quality control policies and procedures in place to comply with professional standards and regulatory requirements. The Program is compliance focused and reviews do not assess the appropriateness of the opinions issued, or the advice provided, by members.

Practices must have documented quality control policies and procedures in accordance with APES 320: Quality Control for Firms. The elements of quality control are:

- Leadership responsibilities for quality within the practice
- Ethical requirements

- Acceptance and continuance of client relationships and specific engagements
- Human resources
- Engagement performance
- Monitoring.

An Institute appointed reviewer visits a practice and reviews the quality control policies and procedures that are implemented in that practice by:

- Examining the practice's manuals, working papers and other documents to evaluate adherence to professional standards and regulatory requirements
- Selecting a cross section of recently completed engagement files to assess whether quality control policies and procedures are being.

In relation to insolvency engagements we assess whether the practice's quality control policies and procedures are being implemented in accordance with APES 320 and APES 330 (effective from 1 April 2010) replacing the current APS 7 Statement of Insolvency Standards.

Quality reviewers

All reviewers are experienced Chartered Accountants who work, or have worked in public practice. They are selected because of their professional reputation and practice experience, and their expertise and experience is matched as closely as possible to the practice under review to enhance the efficiency and effectiveness of the review. Reviewers are appointed by the Institute with the consent of the practice being reviewed.

Limitations of the Quality Review Program

For members eligible for a review, a review is a mandatory requirement of their Institute membership. A review is conducted on a professional basis. It is not an investigation, as the Institute does not have the legal power to seize information.