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24 March 2011

Ms C McDonald
Secretary
Standing Committee on Finance and Public Administration
by email

Dear Ms McDonald

INQUIRY INTO EXPOSURE DRAFT OF THE PRIVACY AMENDMENT LEGISLATION – CREDIT REPORTING

Thank you for your letter of 4 February 2011. We have no specific comment on the draft.

We simply restate what we put to the ALRC in December 2007. Firstly, insolvency administrators (trustees in bankruptcy and company liquidators) are given extensive powers of investigation and inquiry, and powers to recover assets, for the benefit of creditors. Their conduct is supervised by the regulators and by the courts. Insolvency administrators should not be unduly restricted by privacy requirements in their investigations and inquiries and in the general performance of their duties. The IPA supports the issue of privacy guidelines or if appropriate, nominated exclusions or exemptions from privacy requirements for insolvency administrators, that acknowledge the need for trustees and liquidators to pursue their investigations and recoveries.

Second, the principles by which insolvency law operates are based on a collective process, in the public interest, where the need to advertise, report on and explain the outcome of the insolvency – whether that be a personal or a corporate insolvency - is important. They should not be unduly restricted by privacy principles in using public processes and registers in order to abide by those requirements. The IPA supports the issue of guidelines and exclusions that acknowledge the need for trustees and liquidators to advertise and publicise insolvencies. Generally, where a power under which an insolvency administrator acts is based on statute, the exercise of this power should be accepted as subject to the exclusion in any privacy principles based on the exercise of the power being required or authorised by or under law.

Other than that, we make no particular comments. Please contact me if we can assist further.

Yours sincerely

Michael Murray
Legal Director

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