Introduction

1 Law reform can be a protracted process. A good example of the dilatory progression in gaining law reform can be found by tracing the history of the Australian regulatory framework for corporate insolvency practitioners (“CIPs”).

2 CIPs play a key role in the administration and operation of corporate insolvency laws1 and the maintenance of public confidence in the corporate insolvency regime.2 To fulfil their role, CIPs must be academically qualified, possess relevant commercial and financial experience as well as integrity, impartiality, independence and good management skills.3 The CIP regulatory system must ensure that CIPs have the necessary academic qualifications, working experience, and are fit and proper persons to undertake corporate insolvency appointments.

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2 United Nations Commission on International Trade Law (“UNCITRAL”), Legislative Guide on Insolvency Law, at [35], copy available at: <www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf> [last viewed 6 March 2014] (the “Legislative Guide on Insolvency”). It is equally important that the public has confidence in the insolvency profession itself. See also the European Bank for Reconstruction and Development (“EBRD”) Insolvency Office Holder Principles (June 2007), at 3, copy available at: <www.ebrd.com> [last viewed 6 March 2014]: ’A properly qualified, trained and regulated cadre of office holders is essential for the transparent, effective and efficient functioning of these (insolvency) systems.’
3 Legislative Guide on Insolvency, above note 2, at [35], [39]–[41].
Where a CIP has engaged in misconduct, the regulatory system is intended to provide a procedure for dealing with complaints and discipline.4

3 In 1988, the Law Reform Commission in the General Insolvency Inquiry Report No 45 (the “Harmer Report”)5 outlined the shortcomings of the then Australian regulatory system governing insolvency practitioners (“IPs”). Such shortcomings included: a wasteful and impractical use of resources which failed to provide a prompt response or determination to complaints against such professionals and did not determine nor review the remuneration, nor the establishment of standards of conduct and ethics of the same professionals.6

4 It is the author’s contention that over the prevailing 25 years since the Harmer Report, little substantive reform of the CIP’s regulatory framework has been achieved. Further, the criticisms made in 1988, with the exception of the establishment of professional standards of conduct and ethics, have not been addressed, but still apply to the regulation of CIPs today. A question then arises whether CIP regulatory reform would be further advanced if the Harmer Report’s recommended co-regulation model7 had been adopted?

5 To answer this question the remainder of this article is organised as follows. Section II outlines the main criticisms arising from the Harmer Report regarding the CIP Regulatory Framework with respect to registration, discipline and remuneration of CIPs. Section III considers which Harmer reforms have been implemented as well as discussing recommendations made by various inquiries following the Harmer Report, which have or have not been implemented to date, including possible reasons for their non-implementation.

6 The regulation of CIPs has been the subject of a number of inquiries following the Harmer Report.8 However, this paper restricts its discussion to the recommendations of the Harmer Report and the following three inquiries:

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4 Ibid., at 188 (Recommendation 115).
5 Harmer Summary Report, above note 1, at [2]; ALRC, General Insolvency Inquiry Report No 45 (1988, Commonwealth of Australia, Canberra) (the “Harmer Report”). The Harmer Report was an important milestone in the reform of Australian insolvency law, providing the first opportunity for a comprehensive review of corporate insolvency law. The Harmer Report also reviewed the law relating to bankruptcy which had been previously reviewed by the Clyne Committee, some twenty-five years earlier, between the years 1956–1962.
6 Ibid., at [209].
7 Under a co-regulation model, professional bodies have both representative and regulatory roles. The Government provides a legislative mandate to the role of the professional bodies in matters such as rule making and the administration of the disciplinary system. Government legislation sets standards to be applied by the professional bodies and provides for external scrutiny of their actions.
8 Aside from the outlined inquiries which form the scope of this paper, the regulation of CIPS has been considered by the following: The Australian Trade Practices Commission, Study of the Professions (1994, Commonwealth of Australia, Canberra) (completed in 1992) (the “TPC Report”); The Corporations and Markets Advisory Committee (“CAMAC”), Rehabilitating Large and Complex Enterprises in Financial Difficulties (2004, Australian Government, Sydney), copy available at:
• The Corporate Insolvency Laws: A Stocktake completed by the Parliamentary Joint Committee on Corporations and Financial Services, in June 2004 (the “PJC Report”);10
• The regulation, registration and remuneration of insolvency practitioners in Australia: the case for a new framework completed by The Senate Economics References Committee September, 2010, (the “Senate Committee Report”).11

7 In section IV, the progress of CIP regulatory reform is summarised, the present Australian CIP Regulatory Framework is assessed in terms of its ability to achieve its aims and the International standards set by the EBRD Insolvency Officeholder Principles. Within Section IV, the Australian framework is benchmarked against the CIP Regulatory frameworks in the United Kingdom and New Zealand. Conclusions are then drawn in Section V.

II Harmer Report Criticisms and Recommendations

A The Regulatory Framework at the Time of the Harmer Report

8 At the time of the Harmer Report’s release, there was a dual parallel system for the registration of IPs: Official trustees12 or private sector registered trustees13 who

11 See Commonwealth of Australia, The Senate Economics References Committee, The Regulation, Registration and Remuneration of Insolvency Practitioners in Australia: The Case for a New Framework (2010, Commonwealth of Australia, Canberra), at 3, [1], copy available at <www.bankruptcy.net.au/docs/Senate%20report%20September%202010.pdf> [last viewed 14 March 2014]. Unlike the two preceding inquiries, the third inquiry was made in light of various findings of insolvency practitioner misconduct: “The inquiry was instigated by Senator John Williams, National Party Senator for New South Wales. Senator Williams has publicly expressed his concern and frustration at the conduct of some insolvency practitioners, the harm caused to businesses and creditors by this conduct and the perceived lack of action by ASIC.” The ambit of the Senate Economics References Committee Inquiry (The Senate Committee) was: “the conduct of the insolvency profession in Australia and the adequacy of efforts to monitor, regulate and discipline misconduct.”
administered the estates of bankrupt individuals; and private administrators who were registered as liquidators to administer the affairs of insolvent companies. However, the administration of a company wound up by order of a court required the appointment of an “Official Liquidator”. Liquidators were registered by each state’s Corporate Affairs Commission (“CAC”) as the delegate of the National Companies and Securities Commission (precursor of the Australian Securities and Investment Commission (“ASIC”)).

9 Liquidator registration requirements were membership of a specified professional body or a three year accounting course and a two year commercial law course or other equivalent qualifications and experience; experience in winding up corporations, capability of performing the duties of a liquidator and being a fit and proper person. Supervision and discipline of CIPs was chiefly the responsibility of the NCSC (CACS in various States and Territories) and the CALDB. CACs were responsible for investigating the conduct of liquidators and to make application to CALDB to exercise its disciplinary powers. Little has changed in 25 years. Essentially the same registration requirements exist today, with the exception of required membership of a specified professional body. As regulator, ASIC (previously NCSC) is still chiefly responsible for investigating liquidators’ conduct and making application to CALDB, which exercises its disciplinary powers.

B Harmer Report Criticisms

10 A number of shortcomings with the existing regulatory system of IPs were identified by the Harmer Report. Firstly, the dual parallel registration systems for liquidators and for registered trustees was considered wasteful of resources, as neither the qualifications, nor the functions to be performed by a liquidator or registered trustee, were considered so distinct as to require separate registration systems.

11 Secondly, investing each State’s CAC with the responsibility for the registration, supervision, investigation and referral to CALDB for discipline of registered

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12 Official trustees are government officials, who administer most bankruptcies.
13 Whereas registered trustees were private administrators, appointed by the Federal Court on payment of an AUD 100,000 bond. The Federal Court was empowered to suspend or cancel such registration on the application of the Registrar: section 155, Bankruptcy Act 1966; rules 58-59, Bankruptcy Rules.
14 Harmer Report Summary, above note 1, at [208], section 21, Companies Code 1981.
15 A registered liquidator would lodge a security of AUD 50,000 with the CAC, although the power to cancel or suspend registration was exercised by each State’s Companies Auditors and Liquidators Disciplinary Board (“CALDB”): Harmer Report Summary, above note 1, at [208].
16 Such experience and capability was to be adjudged by the NCSC as satisfactory.
17 Harmer Report, above note 5, at [926].
18 Section 1282(2)(a)(i), Corporations Act 2001, which required evidence of membership of a relevant professional body was repealed in 2007 by the Corporations Amendment (Insolvency) Act 2007.
19 Section 1292, Corporations Act 2001.
20 Harmer Report, above note 5, at [925].
liquidators was a burden on their resources.²¹ Thirdly, it was considered that CACs were not the appropriate bodies to conduct inquiries into complaints regarding registered liquidators, due to a lack of staff with specialised knowledge and experience in company insolvency work.²² Fourthly, the existing CIP regulatory scheme did not provide for the determination and review of remuneration scales, nor the setting of appropriate professional conduct rules and ethics.²³

C Harmer Report Recommendations

12 The Harmer Report sought to overcome the above criticisms by recommending a single merged co-regulatory system of registration,²⁴ supervision and discipline for IPs,²⁵ as well as a scheme of approval to apply to the remuneration of IPs,²⁶ as discussed below.

I Single System of Regulation and Registration

13 Although the Harmer Report considered there was a need for unity of insolvency legislation, given the similarities between individual and company insolvency, the advantages of insolvency policy control and the greater efficiency and cost savings to be achieved, it did not regard the goal of unity to be of major significance.²⁷ Rather, it considered where possible the substantive uniformity or harmonisation of corporate and individual insolvency laws of far greater importance, than the consolidation of differing insolvency laws into one Act.²⁸

²¹ Ibid., at [926]–[928]. Ironically, the same criticisms would be levelled at ASIC’s role as corporate insolvency regulator by the Senate Committee, some 22 years later.
²² Idem.
²³ Ibid., at [929].
²⁴ Ibid., at [935]. Although most IPs at the time were accountants, the Law Reform Commission did not consider it necessary to restrict eligibility to practise insolvency to accountants or to members of a professional association of accountants.
²⁵ The Harmer Report did not support the creation of a public office (similar to the Official Trustee in Bankruptcy) to administer the winding up of insolvent companies. Rather, it was suggested that the administration of such companies remain with the private sector on the basis of cost and efficiency of administration.
²⁶ Harmer Report, above note 5, at [949].
²⁷ Ibid., at [931]. The Harmer Report noted that there did not appear to be any constitutional impediment to federal insolvency legislation covering individuals and companies.
²⁸ Idem. Although the Harmer Report was inspired to adopt some of the innovations recommended by the 1982 United Kingdom Review Committee on Insolvency Law and Practice (the “Cork Report”), the Harmer Report did not recommend the merger of corporate and personal insolvency law under one legislative act. Prior to the implementation of the Cork Report recommendations in the United Kingdom in 1986, Australia had modelled closely United Kingdom insolvency laws. However, the Cork Report proposed a unified insolvency code which was implemented by the Insolvency Act 1986. From that time, Australian corporate and personal insolvency laws continued to develop independently, contrary to the United Kingdom position.
To promote uniformity, the Harmer Report recommended a two-tiered, co-regulatory model comprised of a Statutory Board,\(^{29}\) funded by the then Insolvency Practitioners Association of Australia (“IPAA”), now the Australian Restructuring, Insolvency and Turnaround Association (“ARITA”), the Institute of Chartered Accountants (“ICAA”), the Australian Society of Accountants (“ASA”) (now “CPA Australia”) and the government, which would be vested with all the powers and functions for the regulation and registration of IPs. The Statutory Board, comprised of seven persons, appointed for three years\(^ {30}\) would have the power to delegate appropriate powers and functions to the then professional associations: IPAA, ICAA and ASA.\(^ {31}\) It was further recommended that the existing classification of IPs, including the office of official liquidator, be replaced with a tripartite classification.\(^ {32}\)

2 Discipline

The Harmer Report recommended that CALDB no longer have any responsibility for insolvency practitioners. Instead, complaints were to be referred to the professional associations for investigation and report with the Statutory Board having ultimate responsibility for imposing sanctions (including compensation, suspension or cancellation of registration).\(^ {33}\)

\(^ {29}\) Ibid., at [939]. The Statutory Board’s proposed functions included:
- Determine appropriate standards for the registration and classification of insolvency practitioners;
- Classify insolvency practitioners according to their experience, knowledge and ability;
- Delegate responsibility to the professional bodies for registration procedures, investigation of complaints and exercise of summary or remedial disciplinary powers and establishment of continuing educational requirements;\(^ {29}\)
- Act upon complaints received against Insolvency Practitioners and refer such complaints to the professional bodies;
- Overview the conduct of the investigation by the professional bodies of complaints referred and sanctions imposed; and
- Overview standards of ethical and professional conduct required to be complied with by Insolvency Practitioners.

\(^ {30}\) Ibid., at [941]. The Attorney-General appoints three registered IPs chosen from persons nominated by the IPAA, ICAA and ASA, his or her own nominee, two lay persons (not IPs) and one legal practitioner chosen from persons nominated by the Law Council of Australia.

\(^ {31}\) Idem. The Harmer Report suggested the following powers be delegated to the professional bodies: conducting the registration system for insolvency practitioners; conducting continuing education courses; and conducting investigations into complaints concerning insolvency practitioners and reporting to the board.

\(^ {32}\) Ibid., at [942]–[943]. The office of official liquidator would be abolished and replaced by one classification of IP which would be eligible for appointment to all insolvency administrations, including court ordered winding up of insolvent companies and voluntary administrations. A second classification would be eligible for appointment to all insolvency administrations excluding court ordered winding up of insolvent companies and voluntary administrations. The third and final class would only be eligible to administer a members’ voluntary winding up and a debts payment plan.

\(^ {33}\) Ibid., at [941].
3 Remuneration

16 It was a recommendation of the Harmer Report that the Statutory Board have exclusive power to determine and set remuneration scales for IPs. However, rather than favour fixed remuneration scales, the Harmer Report favoured the setting of maximum amounts and to determine when reviews should take place.³⁴ In any particular administration, the remuneration to be paid should be subject to the approval of creditors.³⁵

III Implementation of Harmer Report Recommendations

17 Harmer Report recommendations were implemented by the Corporate Law Reform Act 1992. Of particular importance, the Act introduced a new voluntary administration scheme and insolvent trading prohibition. Although the Act also revised the corporate insolvency laws generally, such revision did not extend to any of the Harmer Report recommendations regarding the regulatory system for CIPs or the registration, discipline or remuneration of CIPs. A series of reviews of the CIP regulatory framework by a number of bodies, including the Working Party to review the regulation of corporate insolvency practitioners (1997); Parliamentary Joint Committee on Corporations and Financial Service (2004) and the Senate Economics References Committee (2010) followed.

18 Spanning 25 years, such reviews resulted in numerous recommendations, often of a similar nature to those originally outlined in the Harmer Report. A significantly large majority of these recommendations, tabled in Appendix One to this article, have not been implemented to date. However, the Australian Government has continued to review³⁶ the current regulatory framework applying to insolvency professionals. Following the 2010 Senate Report, an options paper was released for discussion in June 2011. In December 2011, the Australian Government released its Proposals Paper: A Modernisation and Harmonisation of

³⁴ Ibid., at [946].
³⁵ Ibid., at [949] and [951] The recommended scheme for approving remuneration was to be: “Approval of a practitioner’s remuneration should first be sought from the committee of inspection or a meeting of creditors; If seeking such approval is impracticable or approval has been refused, application may be made for the approval of the court; Approval of remuneration at a meeting of creditors should be by an ordinary resolution (majority in no. and value); remuneration may not be approved without full details being given to creditors seven days before the meeting seeking their approval; A creditor or the insolvency practitioner may ask the court to review the remuneration approved by a committee of inspection or a meeting of creditors.”
³⁶ During 2011, the Parliamentary Secretary to the Treasury and Attorney-General jointly released an options paper, followed by a proposals paper, both titled “A Modernisation and Harmonisation of the Regulatory Framework Applying to Insolvency Practitioners in Australia”, for public comment.
the Regulatory Framework applying to Insolvency Practitioners in Australia.\textsuperscript{37} The Insolvency Law Reform Bill 2013 which ensued provides for greater alignment of the laws governing corporate and personal insolvency administration and practitioner regulation based upon the existing provisions in the Bankruptcy Act 1966. For the sake of completeness, proposed amendments under the Bill addressing regulation, registration, discipline, and remuneration of CIPs are included in Appendix One.

1 Single System of Regulation, Registration and Supervision

19 Although a merged system of registration and supervision for corporate and personal IPs was recommended by the Harmer Report, to date no such merger has taken place. A common theme for the retention of the status quo by the various reviewing bodies has been the difficulty of quantifying the costs and benefits of implementing a merged regulatory system. The lacuna of corporate insolvency industry data has been identified as a recurring theme in the Harmer Report,\textsuperscript{38} the PJC Report\textsuperscript{39} and the Senate Committee Report.\textsuperscript{40} Despite repeated calls for the provision of more comprehensive, and comparable corporate insolvency data to be made available including the creation of an independent information gathering agency, the lacuna prevails.

20 However, in the course of its inquiry, the Senate Committee heard anecdotal evidence of various costs associated with the different regulatory treatment of the administration of personal and corporate insolvencies. Such costs included the unnecessary regulatory burden on IPs to keep up-to-date with changing compliance and reporting requirements of both the Insolvency and Trustee Service Australia (“ITSA”), now the Australian Financial and Security Authority (“AFSA”), and ASIC.\textsuperscript{41} In comparison, a number of efficiencies in having a single regulator for both areas of insolvency law were identified by the Productivity Commission.\textsuperscript{42} Believing ASIC was overburdened by its existing oversight role,\textsuperscript{43} and wishing to

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38 Harmer Report, above note 5, at 27. The Harmer Report commented that statistics on corporate insolvency in Australia are not readily available in any ‘comprehensive, identifiable or intelligent form’ in stark contrast with the collection and publication of detailed information on personal bankruptcies.

39 PJC Report, above note 10, at 5.

40 Senate Committee Report, above note 11, at 117.

41 Ibid., at 127, [10.8], referring to the IPAA’s submission to the Productivity Commission’s Annual Review of Regulatory Burdens on Business.

42 Ibid., at 127, [10.9]. Benefits included pooling of regulatory resources, greater consistency in decision-making and benefits for business in dealing with one regulator.

43 Ibid., at 147, [11.3]–[11.6]. The Senate Committee referred to (i) ASIC’s 13 stakeholder teams within its organisational structure, of which the oversight of insolvency practitioners was merely one; (ii) ASIC’s six strategic priorities as outlined in its 2008-2009 Annual Report, none of which related directly to corporate insolvency as further evidence of the need for ASIC to give up its role as corporate insolvency regulator.
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take advantage of the efficiencies within ITSA’s regulatory framework, the Senate Committee recommended that the corporate insolvency arm of ASIC be transferred to ITSA to form the Australian Insolvency Practitioners Authority (“AIPA”)

“...the government commission the Australian Law Reform Commission to enquire into the opportunities to harmonise Australia’s personal insolvency and corporate insolvency legislation”.

21 Despite the touted benefits of re-organisation: the opportunity to treat insolvency matters more holistically, enabling greater control and focus over day-to-day functions and greater strategic oversight, the Senate Committee’s recommendation was not accepted. It was considered that removing corporate insolvency from ASIC’s responsibility as corporate regulator would mean the loss of substantial efficiencies arising from the important connections which exist between corporate insolvency and other parts of ASIC. These connections included major corporate administrations, regulation of insolvent trading, director and corporate misconduct engaged in, leading up to, or during an insolvency event.

2 Registration

(a) Classification

22 Despite the Harmer Report’s recommendation to abolish the Official Liquidator classification of CIP, the classification of registered and official liquidators exists to date. The Working Party acknowledged the long term merit in phasing out the existing tiers of classification on the basis that the concept of an official liquidator was considered largely outdated. There was no significant difference in complexity between administrations conducted by official liquidators as opposed to those administrations conducted by registered liquidators. However, the Working Party considered it necessary to retain the classification in the short term. Neither the PJC nor the Senate Committee recommended the abolition of the Official Liquidator status.

23 The Senate Committee was more concerned as to whether the current registration process for CIPs was sufficiently rigorous to test for the probity and capacity of applicants. Several options were recommended by the Senate

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44 Aware of ITSA’s lack of skills and expertise in corporate insolvency, the Senate Committee further recommended: “the Memorandum of Understanding between ASIC and ITSA should be updated to ensure that ASIC provides to the new agency adequate resources and the expertise needed to support the oversight of corporate insolvency sector.”

45 Commonwealth Treasury, A Modernisation and Harmonisation of the Regulatory Framework applying to Insolvency Practitioners in Australia, Options Paper (June 2011), at 1, [5]. Similar concerns were raised by Ms Veronique Ingram of ITSA who observed that: “merging ITSA with the insolvency arm of ASIC would be complex”: Senate Committee Report, above note 11, at 128-129, [10.13].
Committee: that AIPA establish a licensing system\textsuperscript{46} and adopt a number of ITSA’s current processes to screen CIPs, such as the panel interview and written exam.\textsuperscript{47}

24 The Insolvency Law Reform Bill abolishes the category of Official Liquidator. In its place, there is a single class of practitioner in corporate insolvency, capable of performing all the functions currently restricted to official liquidators.\textsuperscript{48} However, conditions may be placed on the registration of a specific practitioner by the Committee\textsuperscript{49} (akin to a probationary period) or industry-wide conditions\textsuperscript{50} may be imposed by ASIC as regulator.

25 Although the Insolvency Law Reform Bill does not propose a licensing system, the requirements to sit for an interview and possibly complete an examination, if the Committee so choose are part of the initial registration process.\textsuperscript{52} Registration decisions are subject to review by the Administrative Appeal Tribunal (“AAT”).\textsuperscript{53}

Once the Committee determines a person should be registered, ASIC must register them, subject to their obtaining insurance and paying a registration fee (not previously payable by CIPs).\textsuperscript{54} CIPs would no longer be registered indefinitely, but would apply to ASIC for renewal as long as they satisfy the standard registration requirements of insurance cover, payment of fees, and compliance with continuing professional education requirements.\textsuperscript{55}

\textit{(b) Entry Requirements & Continuing Professional Development & Work Experience}

26 Although most IPs, at the time of the release of the \textit{Harmer Report}, were accountants, the Law Reform Commission did not consider it necessary to restrict eligibility to practise insolvency to accountants or to members of a professional association of accountants.\textsuperscript{56} The former Trade Practices Commission in its report on the accounting profession argued that insolvency practice was only indirectly

\textsuperscript{46} Practitioners should be required to renew their license every three years and be required to pay a licensing fee.
\textsuperscript{47} Senate Committee Report, above note 11, at 79, [7.2].
\textsuperscript{48} Although registration may be granted conditionally, only two classes of restricted registration are proposed. See the Treasury Proposals Paper, above note 37, at 9, [38] – [39].
\textsuperscript{49} Although ASIC still receives applications from persons to be registered as liquidators, under the Insolvency Law Reform Bill, a Committee determines if a person should be registered as a CIP. Division 8, sections 8-10 and 8-15, Insolvency Law Reform Bill 2013. Applications must be referred by ASIC to a Committee within 6 months. The Committee comprises three members: a delegate of ASIC, an IPA representative and a third selected from a pool of candidates chosen by the Minister: section 8-15, Insolvency Law Reform Bill 2013.
\textsuperscript{50} Section 8-25(5), Insolvency Law Reform Bill 2013.
\textsuperscript{51} Ibid., section 8-40.
\textsuperscript{52} Ibid., section 8-25.
\textsuperscript{53} See the Treasury Proposals Paper, above note 37, at 10, [48].
\textsuperscript{54} Section 8-35, Insolvency Law Reform Bill 2013.
\textsuperscript{55} Ibid., sections 8-78 and 8-80.
\textsuperscript{56} \textit{Harmer Report}, above note 5, at [935].
linked to the accountancy profession and, that good insolvency administration, required other skills including management skills, negotiation skills, legal skills and sound business judgement. A consistent though non-implemented recommendation, over the 25 years since the Harmer Report, has been the broadening of entry requirements to include non-accountants such as lawyers.

27 Under the Insolvency Law Reform Bill 2013, the qualification and experience requirements for IPs are aligned across the personal and corporate regimes, are modelled on the current entry standards for personal insolvency with additional enhancements, and are relevant initially on registration and on an ongoing basis.

28 The additional enhancements include the removal of the current preference for accounting over legal studies, while recognising that a minimum level of accounting and legal study is required. Recognising the specialist nature of insolvency services, and adopting in part the IPAA’s previous proposal, a prescribed level of formal tertiary studies in insolvency administration must be completed. However the number of years a CIP applicant must be engaged in relevant employment on a senior full-time basis is reduced from five years to not less than three years in the preceding five years. Lastly, there is mutual recognition given to de-registrations or suspensions in either corporate or personal insolvency regimes.

29 Historically, the Working Party acknowledged that the CIP regulatory system relied heavily on criteria assessed at the point of registration. Both the Working Party and the PJC recommended that the law should provide for procedures to be in place to monitor insolvency practitioners to ensure that they continue to meet ongoing registration criteria in regard to education, including continuous education requirements, skills, resources, experience and fitness for registration. The possibility of ASIC implementing a licensing system as opposed to a registration system for insolvency practitioners was mooted as a means of ensuring that

58 Working Party Report, above note 9, at [6.96]–[6.99]; PJC Report, above note 11, at 82, [3.96]; Senate Committee Report, above note 11, at 156, [11.54] all recommending the criteria for registration recognise qualifications in legal practice. The Senate Committee also believed the profession should attract applicants with a Masters in Business Administration with relevant commercial experience. Although the Senate Committee emphasised the need for a written examination to screen the wider range of applicants.
59 Treasury Proposals Paper, above note 37, at 5, [24]–[29].
60 The IPAA made a submission to the PJC that consideration should be given to reviewing the educational standards required for registration, or to maintain on-going registration as a liquidator should be strengthened and include education (initial IPAA Insolvency Education Program or equivalent and continuing): PJC Report, above note 10, at 82 [3.96].
61 At least equivalent to that currently provided by the IPAA Insolvency Education Program.
62 Working Party Report, above note 9, at [7.54].
63 Ibid., at [7.56]; PJC Report, above note 10, at [3.104] (Recommendation 6). There is no requirement under section 1288(3), Corporations Act 2001 or the Regulations thereto for CIPs to undertake or maintain any continuing professional development.
continuing levels of experience, staffing, resources and educational qualifications were maintained.

30 A thorough review of the regulation of insolvency practitioners was initiated by ASIC under its Insolvency Practitioner Regulation Project. However, no licensing system was implemented. Instead, a policy proposal paper was released in October 2004, which ultimately led to the release on 30 September 2005 of ASIC’s Regulatory Guide 186, outlining ASIC’s current approach to the registration of liquidators and official liquidators under Part 9.2 of the Corporations Act 2001.

3 Discipline

31 Both the Harmer Report and the Working Party Report identified ASC’s lack of resources and expertise to adequately supervise, or assess complaints in relation to practitioners’ conduct as a deficiency in the disciplining of CIPs. The Senate Committee identified three areas of similar concern with ASIC’s role as principal regulator:

(i) ASIC’s reliance on complaints instead of proactive profiling of the insolvency industry;
(ii) ASIC’s slowness in responding to complaints, particularly where significant wrong doing had been subsequently found;
(iii) whether ASIC is adequately resourced to monitor the insolvency industry.

32 To address this deficiency, both the ALRC and the Working Party thought it necessary to identify which body/bodies should be responsible for setting appropriate standards of IP behaviour and compliance monitoring of IPs, as distinct from disciplining an IP and providing a suitable remedy to an aggrieved person where a complaint has been made. At present, professional bodies and ASIC share the responsibility for the setting of IP behaviour standards and compliance monitoring. The development of a code of ethics for CIPs has been one of the few successfully implemented reforms to the CIP regulatory framework.

64 PJC Report, above note 10, at [3.106].
65 ASIC Regulatory Guide 186 (1992, Commonwealth of Australia, Canberra) provides that: “undertaking continuing professional development activities in accountancy, commercial law or corporate insolvency law and practice, as appropriate, to remain up-to-date with developments affecting your work as a registered liquidator will be taken into account in determining whether a liquidator remains “fit and proper” to retain ongoing registration”.
66 Working Party Report, above note 9, at [7.4].
67 Senate Committee Report, above note 11, at 66, [6.6].
68 Working Party Report, above note 9, at [7.6].
69 Professor Elaine Kempson, Review of Insolvency Practitioner Fees Report to the Insolvency Service (July 2013), also stated in the report: “there is much we can learn from Australia and from the Insolvency Practitioners Association of Australia (IPAA) Code of Professional Practice in particular.” The IPAA was renamed ARITA in August 2013.
(a) Appropriate Standards of CIP behaviour: A Code of Ethics

33 In terms of ethics and professional standards, the Working Party considered that competition in the marketplace provided an adequate mechanism to ensure adherence to a professional code of conduct through membership of a professional organisation, such as the ICAA, the ASCPA or IPAA. Mandatory legislating for a code of conduct and ethical standards as well as investing ASC and/or CALDB with disciplinary powers would involve additional costs. Although recognising that a statutory code of ethics enforceable by ASIC would have the advantage of being specifically tailored to IPs’ circumstances and would apply to all IPs per se, the PJC likewise agreed with the Working Party that the design and content of professional codes is a matter for practitioners’ professional bodies to determine.70 Neither the Senate Committee nor the Law Reform Bill made any recommendations or proposals to introduce a statutory code of ethics. However, the ARITA Code of Professional Practice came into effect on 1 January 2014. Its primary purposes are to educate ARITA members as to their professional responsibilities and provide a reference for stakeholders so they may gauge the conduct of practitioners.71

(b) Disciplining CIPs

34 The Working Party first recognised the considerable disadvantages in terms of costs, and delay in maintaining two separate disciplinary procedures for CIPs: a statutory procedure and the self-regulatory procedures of the professional bodies.72 However, such costs were outweighed by the perception of a lack of independence or impartiality if the professional bodies were to take over the disciplinary role completely, especially in regard to matters involving allegations of serious misconduct.73 It is considered that the same concern for maintenance of professional independence has led to the Insolvency Law Reform Bill 2013 allowing prescribed industry bodies to lodge a notice with ASIC stating the body reasonably suspects that there are grounds for ASIC to suspend or cancel a registered liquidator’s registration. ASIC must consider such information and make a decision whether to take action or not against the registered liquidator.74

70 PJC Report, above note 10, at [3.40]–[3.41]. The PJC also relied upon section 1282, Corporations Act 2001, which enabled ASIC to consider the ethical and professional standards of an IP when determining whether they were a proper person to be registered as a liquidator.
73 Idem.
74 Section 16-85(2), Insolvency Law Reform Bill 2013. The exposure draft on the Insolvency Law Reform Bill states that ASIC has 60 days to conduct a preliminary investigation and determine whether or not to take action.
35 It was the recommendation of the Harmer Report that CALDB no longer have any responsibility for insolvency practitioners. Instead, reliance was to be placed on self-regulatory procedures such that complaints were to be referred to the professional associations for investigation and report and the Statutory Board would impose sanctions (including compensation, suspension or cancellation of registration). The Senate Committee also received various criticisms against CALDB including:

“the Board lacks independence from ASIC, takes a prolonged time (and cost) to reach a finding, has few cases referred and makes few findings, and is often referred inconsequential matters.”

36 Despite consistent and enduring criticisms of CALDB, the Senate Committee, believed CALDB should be retained, but that the Board’s deliberations and findings be given in open, unless ruled otherwise, and that past hearings and evidence should also be open to inspection so as to give its investigative and adjudicative processes transparency. The Insolvency Law Reform Bill 2013 has followed in part the recommendation of the Harmer Report as it provides the CALDB is no longer responsible for the disciplining of liquidators. Rather a three person Committee (based on the current system operating under the Bankruptcy Act 1966) may be convened by ASIC and, if so convened, must consist of ASIC, a practitioner appointed by the IPA, and a person appointed by the relevant Minister. The committee may consider application/s for registration as a liquidator (see above discussion) and/or matters relating to the disciplining of registered liquidator(s). The separation of investigatory and disciplinary roles, however, has not been maintained as ASIC’s representation on such a committee would appear substantial.

37 The Committee is empowered to grant a wide range of remedies including remedies beyond the present power of CALDB to award. The Insolvency Law

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75 Senate Committee Report, above note 11, at 75, [6.37].
76 Ibid., Recommendation 4. Since 1 January 2008, section 1296(1B), Corporations Act 2001 has given the Board the power to take such steps as it considers reasonable and appropriate to publicise its decisions to exercise its powers under section 1292 and the reasons for its decisions.
77 Ibid., at 151, [11.25]–[11.26].
78 Section 16-55, Insolvency Law Reform Bill 2013.
79 Ibid., sections 18-15, 18-20. Under section 16-50, ASIC would be able to issue a show cause notice to a CIP and make a referral to a Committee where ASIC believes the CIP no longer meets the ongoing requirements to maintain registration (section 16-50(1)(a)) or the CIP has breached a condition of his/her registration (section 16-50(1)(c)).
80 Ibid., section 16-70 outlining remedies, including section 16-70(1)(f) that a condition specified in the decision should be imposed on the liquidator. Section 16-70(2) then provides examples of the conditions which may be imposed under section 16-70(1). For example, a condition that the liquidator engage in, or refrain from engaging in, specified conduct which may include removing a person from a specified administration, or restricting a practitioner from acting as a delegate or on behalf of another practitioner following their deregistration (for up to 10 years) or during a period of suspension.
Reform Bill 2013 also proposes to address the issue of CALDB’s lack of transparency by requiring Committees to publish their decisions and reasons in relation to disciplinary matters. 81

(c) Monitoring of CIPs

38 To improve the monitoring of CIPs the Senate Committee recommended a proactive approach be adopted of a random audit in the form of a ‘flying squad’. 82 The audit unit would be responsible for conducting investigations of a sample of insolvency practitioners, selected at random and with the aid of a risk profiling system and market intelligence. 83

39 The Insolvency Law Reform Bill 2013 has likewise adopted a proactive approach by proposing to amend the ASIC Act 2001 84 to provide ASIC with further information gathering powers to obtain specified information and to produce specified books, concerning an administration or the conduct of the CIP, by giving a written notice to the liquidator. To improve ASIC’s powers of surveillance, it is further proposed to amend section 33 of the ASIC Act 2001 to give ASIC additional authority to attend premises at which the CIP is carrying out administrations, to inspect books and to require reasonable assistance.

40 Despite the Senate Committee noting a number of advantages to establishing an Insolvency Ombudsman to deal with smaller financial matters promptly and provide a voice for complainants, 85 neither the Senate Committee, 86 nor the Insolvency Law Reform Bill 2013 proposed the establishment of an Insolvency Ombudsman. Instead, the Insolvency Law Reform Bill 2013 proposes to expand the grounds by which ASIC may suspend 87 or cancel, 88 by written notice without referral to a Committee, 89 a practitioner’s registration. The concern with investing ASIC with greater powers of investigation is that ASIC is not similarly invested with the necessary resources to exercise such powers. As noted earlier, ASIC has power was included to address the concern that certain deregistered IPs continue to be involved in high level insolvency case management as consultants.

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81 Ibid., section 16-70(1)(b).
82 Senate Committee Report, above note 11, at 149, [11.13]–[11.18], on the basis of it being less costly than the ITSA model of an annual (or biennial) review of all practitioners.
83 Idem.
85 Senate Committee Report, above note 11, at 150, [11.21]–[11.23].
86 The Senate Committee gave priority to the establishment of the new insolvency regulator, the AIPA as the means of handling complaints.
88 Ibid., section 16-40.
89 Ibid., section 16-45. ASIC already has limited grounds to do so currently under section 1290A(1), Corporations Act 2001. In exercising its suspension or deregistration powers, ASIC would be required to afford natural justice to the CIP.
been under-resourced in the past. The proposed changes described above expand, rather than diminish, ASIC’s role in monitoring CIPs.

4 Remuneration

41 In the Harmer Report, the ALRC recommended that the regulatory authority (proposed Statutory Board) have the exclusive power to determine and set legislatively recognised maximum remuneration scales for practitioners and review those levels at appropriate times.90 In contrast, the Working Party Report, the PJC Report91 and the Senate Committee Report adopted a self-regulatory approach. All three inquiries considered that:

“the market should be allowed to determine the most cost-effective fee system.”92

42 To effectively do so, the Working Party Report93 recommended that the ASC and relevant professional bodies consider the appropriate means of educating creditors and IPs about the various fee setting methods: time based/hourly rate; fixed fees and capping and commissions, and to the rights of creditors in establishing fees, so as to encourage their greater involvement in the fee setting process.

43 Despite this belief a mixture of statutory, self-regulatory and market disclosure measures followed the PJC Report. Statutory reform of the requirements for insolvency practitioners in setting and receiving their fees occurred with the passing of the Corporations Amendment (Insolvency) Bill 2007 which amended the Corporations Act 2001 to require CIPs to prepare a report of their fees for creditors. Relying upon self-regulation measures, the IPAA amended its Code of Professional Practice in 2008 to include a section on the three principles of remuneration: the work is ‘necessary and proper’; a fee claim is accompanied by ‘sufficient, meaningful, open and clear disclosure’ and approval is gained and recorded before remuneration is drawn. In the same year, ASIC released an information sheet94 for creditors on approving CIPs fees.

90 Harmer Report, above note 5, at [946].-[947].
91 Working Party Report, above note 9, at 163, [10.62].
92 Idem.
93 The PJC believed that enhancing disclosure of the basis of fee setting would address some creditor concerns and allow unsophisticated creditors the capacity to negotiate meaningfully with practitioners about fees levied for external administrations: PJC Report, above note 10, at [7.26]–[7.27] (Recommendation 26). Like the PJC, the Senate Committee believed greater disclosure of the remuneration report would make liquidators more accountable and prevent overcharging and over-servicing. To that end, the Senate Committee recommended that the new insolvency regulator work with the IPAA and ICA to ensure that insolvency practitioners comply with the remuneration report template set out in the IPAA Code of Professional Practice: Senate Committee Report, above note 11, at 158 (Recommendation 16).
44 Despite these changes, the Senate Committee acknowledged there was continuing disquiet about the fees charged by IPs and continuing concern about the lack of effective regulatory oversight.95 A number of reasons were identified by the Senate Committee for this continuing disquiet and concern and are summarised below:96

- Using an hourly rate basis of fee setting encourages over-servicing by IPs;
- Deliberately inflating costs on larger long-running insolvencies to cross-subsidise work performed on smaller or asset-less administrations;
- No creditor approval requirement needed for disbursements as opposed to IP remuneration;
- Priority payment afforded to IP fees;
- Lack of collection and public disclosure of statistical data regarding levels of IP remuneration.

45 In making their recommendations the Senate Committee considered any attempt to control IPs fees by setting scale rates of fees would further distort the already distorted market for IPs’ services.97

46 The Senate Committee, relying on market forces, considered that overcharging and over-servicing by IPs would be best resolved by increasing the level of competition amongst IPs by attracting a greater number of suitably experienced applicants to the profession.98 However, rather than rely solely on market forces the Insolvency Law Review Bill 2013, reminiscent of the Harmer Report’s recommendation, also imposes fixed maximum capped fee amounts in relation to approval of prospective time based fee entitlements99 and enables CIPs to claim a minimum fee of AUD 5500 (GST inclusive).100

47 To address the misuse of disbursements by CIPs employing third parties to undertake services on behalf of the CIP and thereby avoid the scrutiny of section

95 Senate Committee Report, above note 11, at 96, [8.7].
96 Idem.
97 Idem. It was the Senate Committee’s view that the priority of payment given to IPs’ fees, disbursement payments and the cross-subsidisation of fee setting on larger administrations distorted the market for IP services.
98 Ibid., at 156, [11.54] and Recommendations 13–15. The Senate Committee recommended that the insolvency regulator suspend a liquidator’s license if they believe overcharging has occurred; amendments be made to section 503, Corporations Act 2001 so that the Court may remove a liquidator where it appears time based charging of the incumbent has not or will not result in a reasonable cost-benefit analysis for the company.
99 Section 22-15(4), Insolvency Law Reform Bill 2013. Once set, the initial fee cap may be revised later only by a creditor or Committee of Inspection (“COI”) resolution or by the Court: sections 22-20 and 22-25.
100 Ibid., sections 22-10(2) and 22.30(1)(a) set the default remuneration amount. The effect of this change is to allow CIPs a minimum guaranteed entitlement to remuneration to carry out certain basic functions without having to go to the expense of holding a creditors meeting which may not attract a quorum. See Treasury Proposals Paper, above note 37, at 13, [63].
449E of the Corporations Act 2001, CIPs or their related entities are prohibited from directly or indirectly deriving any profit or advantage from a transaction, sale or purchase for or on account of the company.

**IV The Progress of Reform**

**A The Current Regulatory Framework for CIPs**

Twenty five years on, a number of the Harmer Report recommendations regarding CIP Regulation have been partially implemented, evidenced by the substantial participation of the insolvency industry’s professional bodies in the registration, discipline and education of CIPs.

There have been statutory amendments to the regulation of fixing the remuneration of CIPs, as well as disclosure guidance provided by ASIC and ARITA’s Code of Professional Practice to improve the transparency and creditor engagement of the remuneration approval process. However, unless the Insolvency Law Reform Bill 2013 is enacted by the new government, the remaining criticisms voiced in the Harmer Report, which are still reflective of the current CIP regulatory framework, will remain unaddressed. Namely, there will be no harmonisation of personal and corporate insolvency practitioner regulation. Divergence in such regulation imposes a cost not only on CIPs specifically, but on all stakeholders within the corporate insolvency industry. As such a stakeholder, ASIC will be restrained from engaging in a proactive surveillance program of CIPs, analogous to that carried out by AFSA (previously ITSA) of trustees in bankruptcy. There will be no broadening of entry requirements for CIPs such that the current barriers to entry into the corporate insolvency industry will remain unchanged. The discipline of CIPs will remain a slow, costly process, which will not increase consumer confidence in the corporate insolvency framework.

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101 Senate Committee Report, above note 11, at 103, [8.33], where this practice was identified.
102 Sections 22-40(1), 22-45, 22-50 and 22-55, Insolvency Law Reform Bill 2013 prevent the CIP from accepting extra benefits, giving up remuneration to another person, or purchase any assets of the company.
103 Harmer Report, above note 5, at [931]. The ALRC referred to the need for substantial professional participation in the regulation of IPs, so that: (i) the interests of professionals are adequately represented and understood; (ii) skill and knowledge of the professional are utilised and (iii) professionals identify with the system of regulation so as to command respect for the profession and maintain a sense of individual responsibility for its standards.
104 See earlier discussion under Entry Requirements & Continuing Professional Development & Work Experience.
106 Although the Insolvency Law Reform Bill 2013 proposes changes which address the main criticisms of the Harmer Report, reiterated by the Working Party and focussed on by Senate Committee, the Bill has not advanced beyond the exposure draft stage. To date, the Bill has not been listed for parliamentary consideration in 2014.
B Benchmarking Australia’s CIP Regulatory Framework Reform

1 IP Regulatory Reform in the United Kingdom

50 The Harmer Report’s recommendations sought to impose a co-regulatory model of registration and regulation on Australian IPs similar to the regulatory framework which has existed in the United Kingdom since 1986. Instead, Australia’s current CIP framework is a mix of government and self-regulation.

51 In comparison, within the United Kingdom, each of the seven recognised professional bodies (“RPBs”) is accredited by the Government, acting through the Insolvency Service. Accreditation is based upon each body imposing respective rules, regulations and disciplinary procedures on their members to ensure they are fit and proper persons with the necessary experience, qualifications and insurance to act as IPs. Self-regulatory models have the advantage of being more flexible and subject to lower compliance costs than direct government regulatory models. However, the number of professional bodies regulating the relatively small industry of insolvency practitioners in the United Kingdom has been criticised over the years and various reviews, have sought to ‘rationalise the duplication inherent in this system’.

52 Two recent reviews by the Office of Fair Trading and Professor Elaine Kempson have suggested that the United Kingdom IP Regulatory framework would be more effective if fewer bodies were involved. As a first step in reducing the number of insolvency regulators the Secretary of State will stop authorising...
IPs. The United Kingdom Government also seeks to introduce a power in the law to enable the introduction of a single regulator as a reserve measure. Further proposals to strengthen the regulatory framework include: the introduction of clear regulatory objectives; giving the oversight regulator, the Insolvency Service, more appropriate powers to deal with poor performance, misconduct and abuse such as imposing fines, reprimanding and publicising the transgressions of RPBs. In an attempt to control the continuing disquiet about the size of fees and number of hours charged by IPs and so ensure better returns for unsecured creditors it is proposed to remove the option of time-cost basis for remuneration, except in cases where there is tight control over the work being performed.

2 IP Regulatory Reform in New Zealand

In comparison to the United Kingdom, New Zealand’s IP regulatory framework is in the embryonic stage of co-regulation. In 2010 the Government introduced the Insolvency Practitioners Bill which established a public register for IPs, required all IPs to be registered and allowed for the removal/disqualification of IPs from the register. The Bill promotes a “negative” regulation such that there are no positive factors to be satisfied before being eligible to be a “registered insolvency practitioner”, such as qualifications or experience. Rather eligibility is dependent upon being a natural person over 18 unless otherwise disqualified.

The Bill has been widely criticised. In response to such criticism, New Zealand’s Institute of Chartered Accountants (“NZICA”) and INSOL New Zealand (“INSOLNZ”) have discussed self-regulatory initiatives to increase the regulation of IPs to ensure IPs are sufficiently skilled and experienced and are fit and proper to carry out insolvency work. Currently, NZICA and INSOLNZ are in the process of entering

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113 The Deregulation Bill is currently before the House of Commons Public Bill Committee. A copy is available at: <www.gov.uk/government/publications/draft-regulation-bill> [last viewed 13 March 2014].
114 Insolvency Service, above note 109, at 5.
115 Idem.
116 For further discussion of the New Zealand regulatory framework, see Brown and Symes, above note 110, at 235.
117 Idem. In a press release announcing that the Bill had passed its second reading, it was stated that a Supplementary Order Paper proposing further amendments to the Bill to better align requirements for the different types of practitioners and to clarify the obligations of practitioners would also be introduced.
118 Such initiatives include an IP licensing system which would require licensed IPs to hold a Certificate of Public Practice from NZICA; satisfaction of minimum practical experience requirements, satisfaction of fit and proper person requirements, mandatory CPD and minimum levels of professional indemnity insurance. See NZICA and INSOL New Zealand, Insolvency Practitioner Regulation (2013 Consultation Document), at 6, copy available at: <www.nzica.com/News/Archive/2013/June/NZICA-and-INSOL-propose-enhancing-regulation-of-insolvency-specialists.aspx> [last viewed 20 March 2014].
into a Memorandum of Understanding regarding their respective roles, accrediting IPs and developing an insolvency qualification.\textsuperscript{139}

\section{International Standards}

54 Despite the long awaited and as yet not implemented insolvency reforms, Australia’s CIP regime appears to meet international standards.

55 In 2007, The European Bank for Reconstruction and Development (EBRD) identified twelve Insolvency Office Holder Principles.\textsuperscript{120} Of most relevance to this article’s discussion are the following four principles: 1 (Qualification and Registration); 8 (Regulatory and Disciplinary Functions); 9 (Remuneration and Expenses); and 12 (Code of Ethics). The Australian CIP Regulatory framework would appear to satisfy the majority of the recommendations outlined under each of the above principles. For example, with respect to Principle 1, existing Australian law\textsuperscript{121} requires CIPs to obtain appropriate education standards, relevant experience, skills and good character elements prior to gaining registration. Principle 12, which recommends that the law should encourage and facilitate the development of a code of ethics for officer holders, preferably through a professional body, is addressed by ARITA’s Code of Professional Practice.

56 However, further reform of the CIP regulatory framework may be informed by Principle 9(d) which recommends that the law should provide the basis upon which the remuneration of an office holder may be calculated, maintaining a balance between remuneration based on “time” and a “percentage of realisations and/or distributions”.

\section{Conclusion}

57 It is uncertain whether the non-adoption of the Harmer Report’s co-regulatory model of CIP regulation has contributed to the delay in legal reform of CIP regulation. The CIP Regulatory Frameworks in Australia, The United Kingdom and New Zealand exemplify that there is no clear:

\begin{quote}
“dichotomy between self-regulation and public regulation, but rather a spectrum containing different degrees of legislative constraints, outsider participation in relation to rule formulation or enforcement (or both), and external control and accountability.”\textsuperscript{122}
\end{quote}

\footnotesize

\textsuperscript{120} Above note 2. The twelve principles encompass qualifications, appointment, conduct, supervision and regulation of office holders in insolvency cases.

\textsuperscript{121} Section 1282, Corporations Act 2001.

Along this spectrum all three jurisdictions have experienced delays in legal reforms to corporate insolvency practitioner regulation as illustrated in the paper. Support for the view that the Australian regulatory model per se has not necessarily perpetuated delays in legal reform may be the reliance on Australian regulation of CIPs to inform United Kingdom and New Zealand law reforms. Instead, delay in legal reform may be placed, at least in part, on the lack of empirical data to identify, inform and cost the dimensions of relevant insolvency issues. The Working Party, PJC and Senate Committee Reports which followed the Harmer Report share a familiar theme: the lack of adequate, publicly available data concerning the corporate insolvency industry in Australia. Such data is crucial to effective policy-making, public debate, regulation implementation and ongoing review.

The multiple reviews conducted by the Australian Government since the Harmer Report has meant the outlay of public funds with few changes to existing laws and the perpetuation of existing criticisms of the CIP regulatory framework. The change of government in Australia in September 2013 has led to the further stalling of insolvency law reform, which at best as illustrated in this article, is a slow process. Given the current government’s cost-cutting agenda, it is unlikely that the full gambit of reforms, outlined in the Insolvency Law Reform Bill 2013, will be implemented, the consequence being that some of the criticisms made by the Harmer Report will continue unaddressed and the slow process of insolvency law reform is likely to continue. However, if the measures in the Insolvency Law Reform Bill 2013 to align laws governing corporate and personal insolvency practitioners were implemented, a ‘minimalist’ merger of corporate and personal insolvency practitioner regulation would result. The irony is that a single system of registration and a single regulator for IPs, a key recommendation made by the Harmer Report twenty five years ago, would be the next logical step in regulating IPs. As the saying goes, “Everything old is new again”.

In the United Kingdom, only an authorised or licensed insolvency practitioner (usually abbreviated to IP) may be appointed in relation to formal insolvency procedures. Quite often IPs have an accountancy background. A few active practitioners are lawyers, but it is not necessary to be qualified as either, as since 1986 there has been a direct entry route to the profession. The European Insolvency Regulation (Regulation (EC) No 1346/2000) (the “Regulation”) has reduced the risk to banks and financial institutions of enforcement against. New European legislation addresses some deficiencies of the Regulation and introduces a new framework for group insolvencies. Banks lending to groups of companies will take note in particular of the increased scope for coordination between different jurisdictions in complex cross-border group insolvencies. The Recast Regulation. The Regulation originally came into force on 31 May 2002. The Insolvency Regulation provided for a review of its operation after ten years and in December 2012 the European Commission made proposals for it to be updated. The term “Insolvency” is derived from the term “insolvent”. An insolvent person is a person that is unable to pay his or her debts. Thus, insolvency is the state of inability to pay money owed by an individual to another. See Jona Israel, European Cross-Border Insolvency Regulation a Study of Regulation 1346/2000 on insolvency Proceedings in the Light of a Paradigm of Co-operation and a Comitas Europaea (Intersentia 2005) 30. Peter Muchlinski, “Limited Liability and Multinational Enterprises: A Case for Reform” (2010) 34 Cambridge Journal of Economics 915; Paul Davies, Sarah Worthington and Laurence Gower, Gower and Davies’ Principles of Modern Company Law (8th edn, Sweet & Maxwell 2008) 202. 5.