



CHARTERED ACCOUNTANTS  
AUSTRALIA + NEW ZEALAND

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Mr Alan Ashford  
Senior Accountant  
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Australian Securities and Investment commission  
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Dear Mr Ashford,

## Consultation Paper 276

We appreciate the opportunity to comment on Consultation paper 276 Registered Liquidators: Registration, disciplinary actions and insurance requirements (CP276).

We believe the proposal to provide all information in relation to registration, disciplinary and insurance in one guide is helpful. The guidance appears clearly set out. We support the authority of the committee to consider applications on case by case basis in certain circumstances.

### Residency

We note that ASIC is not proposing to list prescribed countries for residency purposes. New Zealand are introducing a licencing requirement which will provide similar levels of independence and competency, and legal oversight, for registered liquidators as currently exists in Australia.

This regime allows Australian resident liquidators to apply for a NZ licence.

We believe it is appropriate, particularly under the Trans-Tasman Mutual Agreement, to provide for New Zealand based liquidators to apply under the ASIC scheme. This may be done by listing New Zealand as a prescribed country for the purposes of s20-20(4)(i) Insolvency Law Reform Act. Insurance arrangements and other registration requirements will continue to be required as set out in CP276 (subject to our comments in this submission).

### Administrative burden

The costs of administration need to be balanced against good process. In this regard we support light touch application, renewal and lodgement requirements. We believe that the processes outlined appear to meet this. However we note that the process still requires the provision of considerable documentation to ASIC. As well as the cost of compiling and submitting this information, there is also the cost of ASIC reviewing and processing each item. We are concerned that the proposals will considerably increase the amount of time ASIC will need to manage the processes. Given that this will be passed on to the liquidator under the "User Pays" proposals, and thereby will impact the cost of proceedings, we recommend further consideration of documents requested. We set out in the Appendix, our suggestions for reducing the documentation requirements.

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We support renewal of registration on an anniversary date rather than a set date for all. To support this, we recommend that ASIC implement an automatic notification process. This simple IT process will alleviate the burden and cost of dealing with cases of inadvertent missing of deadlines.

### **ASIC role**

We note ASIC proposals to enhance its powers of supervision and ability to take action. We are concerned about the matters which may trigger a “show cause” notice. The move to a risk management role in an insolvency firm for example (page 37), may include considerable work in relation to the practical application of insolvency rules and regulations in potentially contentious areas. Identifying this area as a potential reason for losing registration as a liquidator could negatively impact on an individual’s development in managing a range of issues and a firm’s ability to bring appropriate resource to potentially challenging areas.

The practice capacities set out on page 38 are prescriptive and detailed. We do not believe it is ASIC’s role to set out how a business should be managed to this level of detail. Professional standards provide guidance to practitioners on principles for managing their services and require internal quality control systems. We support ASIC’s role in monitoring compliance with standards and systems but do not support ASIC setting the detail of what such systems should be.

### **Insurance**

In relation to insurance, we support guidance on ASIC’s view on adequate and appropriate insurance and we support the linkage to the professional bodies’ professional schemes which are subject to the Professional Standards Council.

On page 55 – Table 9 - we do not agree that “usual commercial terms” is a relevant criteria for assessing whether insurance achieves the policy objective. This phrase should be removed. Similar to our comments on administration generally, there does appear to be an amount of “double-handling” for information and data between the Committee, ASIC, and professional bodies in assessing insurance. If the committee assesses insurance, we do not consider it necessary for ASIC to undertake further work.

Similarly we do not see why ASIC would need to consider the level of PI insurance cover on a case-by-case basis if the cover meets the requirements set out under the professional schemes. We note that there is no requirement for ASIC to inform the applicant if their registration is rejected due to inappropriate insurance or to explain why the application is rejected. We believe this should be explicit.

Should you have any queries concerning the matters discussed in our submission, or wish to discuss them further, please contact Liz Stamford at:

[liz.stamford@charteredaccountantsanz.com](mailto:liz.stamford@charteredaccountantsanz.com) or telephone (02) 8078 5426

Yours sincerely,



**Rob Ward FCA**  
**Head of Leadership & Advocacy**  
**Chartered Accountants Australia and New Zealand**

## APPENDIX

### Proposed documentation requirements and simplification suggestions

CP276 page reference	Proposed documentation requirement	Suggested change	Rationale
11: Tertiary qualifications	Copy of certified academic record	Required unless a member of CA ANZ (or other named professional body) where this information has been required as part of obtaining the qualification. In the latter case a copy of the membership certificate and confirmation from the practitioner that the tertiary education requirements were met in the course of obtaining membership.	If you are a member of CA ANZ, this information would have been collected and assessed as part of the qualification process. Requiring re-collection of this information imposes a time and financial burden on practitioners and institutions which is unnecessary.
	Copy of degree certificate		
11: Specialist insolvency qualifications	Certification letter	Required unless the certificate is issued by [ARITA]	In the vast majority of cases these qualifications will be issued by the same organisation as there are limited options. This requirement therefore is an unnecessary cost if the certification requires these units.
12 and 13: Experience	Full details of 5 years' experience	Details of work experience showing 4,000 hours of relevant experience in the five years immediately prior to application	If the 4,000 hours is completed in the three years immediately prior to application, setting out lengthy material on the other two years is unnecessary and wasted as it is not relevant to the application.
14 and 15: Capacity	Range of factors listed		There is no indication of what documentation ASIC is proposing to allow the committee to consider capacity in light of the factors listed. If material is required for all these matters, it could be substantial. If no documentation is required at application, but these are factors for inclusion at the committee interview, this fact should be stated.
15, 16 and 17: Fit & proper	Criminal history check, bankruptcy check, statutory declaration, two referee reports, employer letter	<p>A statutory declaration stating that currently or in the last 10 years, you have not been convicted for an offence involving fraud or dishonesty, you are not insolvent or under administration, your registration as liquidator or trustee has not been cancelled and you have not been disqualified from managing corporations.</p> <p>If you are unable to make any of these statements, provide details. If you have lived overseas for one year or more during the last 10 years, provide a criminal history check from those countries. Provide one referee report dated...</p> <p>Provide letter from your relevant professional body specifying...</p> <p>If you are an employee, provide a letter from your employer stating that ...independence and resources...]</p>	<p>While reasonable in their own right, the cost and time and potential delay to collect and collate all these pieces of information becomes an administrative problem for little additional benefit. As a statutory declaration is part of the requirements, it seems reasonable to include a statutory declaration for most elements. If there are concerns in relation to the application, the committee has discretion to request additional checks. Two referee reports could also prejudice those applying from regional or smaller practices and we recommend one referee is sufficient for these purposes.</p>

CP276 page reference	Proposed documentation requirement	Suggested change	Rationale
21: Residency	Details of current and past residential addresses over the past five years and dates for each	A statutory declaration that the applicant is resident in Australia or New Zealand.	<p>We recommend that New Zealand be included as a prescribed country for the purposes of registration and so this section will include Australia and New Zealand.</p> <p>We can see no value in providing five years' worth of residential addresses and cannot see what ASIC would do with this information. It is either unnecessary information, or if ASIC intend to check the information, an unnecessary compliance time resource. The Act does not set a time period for residency.</p> <p>We therefore recommend a statutory declaration of residency (as part of the declaration provided above).</p>