

The Institute of Chartered Accountants in Australia (Institute) appreciates the opportunity of providing Comment to the Corporations and Markets Advisory Committee (CAMAC) on its Current Review of Long-Tail Liabilities. As a general principle the Institute supports the principle Proposal for reform of the Corporations Act that: Provision be provided by a Company that is subject to a mass future claim subject to the specified protections contained in the Proposal being;

- there are an exceptional number of personal injury claims; more claims are expected; and
- either the Company has been subject to an unusually high number of claims; or there are other Industries or companies that have been subject to similar claims; and
- there is the strong likelihood of numerous future claims of this type.

The Institute supports the Comments made in particular by Chartered Secretaries Australia and the Business Council of Australia that there needs to be a balance struck between existing Shareholders and Creditors compared to potential Claimants of the mass future claims, particularly given the challenges in estimating at any one point in time, the likely commercial exposure for payment of future mass claims.

The Institute acknowledges the importance of obtaining on-going expert advice on the calculation of the quantum of expected mass future claims and in particular the role that the Actuarial Profession has in the estimation process. There are existing Standards that would have some relevance for such Claims including the Australian Prudential Regulatory Authority's (APRA) Prudential Standards - PS 210 Liability Valuation of General Insurers (GPS 210), The Institute of Actuaries (IAA) Professional Standard 300 'Actuarial Reports and Advice on General Insurance Technical Liabilities' (PS300), and the Australian Accounting Standards Board's (AASB) AASB 1023 'General Insurance Contracts' and AASB 137 'Provisions, Contingent Liabilities and Contingent Assets', both of which are presently under review by the International Accounting Standards Board (IASB).

From an Accounting perspective AASB 137 requires Provisions to be recognised as a Liability on the Balance Sheet where the amount of the Liability is probable and is able to be measured with reliability. Contingent Liabilities which are required to be disclosed in the Financial Statements but not included on the Balance Sheet, are defined in part as Liabilities that are not yet 'probable' or cannot be measured with sufficient reliability. The IASB has proposed changing these Definitions so that a Liability would be the amount at which a Company could pay an External Party to take over the Obligation (future mass claims). However there is strong debate on this Issue which is yet to be resolved.

Either way, the Actuarial Profession would be relied upon to estimate the amount of the future mass claims, and the Accounting treatment would then follow, probably by way of a specific Liability (Provision) and disclosure of additional information around the estimation process.

As detailed in the IAA's Submission, "...it should always be possible to place a reasonable, albeit uncertain, estimate on its value.". The Institute agrees with the IAA's Conclusion: "...that it would not be desirable to make 'reasonable estimation' part of the criteria for protection. If the liability exists and its value is material, then a genuine attempt to protect claimants' interests should be made.".

