AICM Submission to the Productivity Commission

Reducing Barriers to Business Dynamism in Australia

Contents

1. Executive summary

The Australian Institute of Credit Management (AICM) welcomes the opportunity to contribute to the Productivity Commission's inquiry into reducing barriers to business dynamism. AICM represents the credit professionals who make the day-to-day decisions about whether, and on what terms, to extend trade credit to Australian businesses. Trade credit is one of the largest sources of finance in the economy, and the willingness of credit professionals to extend it is fundamental to business entry, growth and renewal.

While this submission is centred on the insolvency framework, the benefits of the reforms it proposes are felt across the entire business lifecycle, beginning at the point credit is first granted. A framework that gives credit professionals confidence supports the extension of credit to new businesses, enables established businesses to weather periods of challenge, maximises the potential for the system to keep viable businesses trading, and ensures that formal exit is an efficient process of last resort, while deterring conduct seeking to defeat creditors.

This submission focuses on the insolvency framework, which the Commission has identified as directly relevant to business dynamism. AICM's central message is that the design of Australia's insolvency laws directly shapes how credit professionals behave toward customers showing signs of financial distress. Where the framework works well, credit professionals can extend credit with confidence, support customers through difficulty, and back genuine restructuring. Where it works poorly, they withdraw support, demand additional security, reduce or cease supply, and disengage from the processes that are meant to protect them. These behavioural responses are rational, and they are a barrier to business dynamism.

The submission is organised around three conditions that the insolvency framework must satisfy to support efficient credit decisions and, through them, a dynamic economy:

- Credit professionals must be able to extend credit with confidence, supported by reliable information about the businesses they deal with
- Credit professionals must be able to support customers in financial difficulty without penalty, including by encouraging early engagement with restructuring and insolvency advice
- When formal insolvency processes are necessary, they must be genuinely efficient, and creditors must be able to engage with them without prohibitive cost or complexity

Measured against these conditions, the current framework falls short in ways that impose real cost on creditors and drag on the economy. The unfair preference regime penalises creditors who support distressed customers, deterring the very behaviour that helps businesses survive. Insolvent trading goes largely unenforced, and the safe harbour, while sound in intent, does not adequately protect the creditors who continue to supply during a restructuring. The framework for disclosing tax debt has improved but still leaves creditors exposed to undisclosed liabilities. Small Business Restructuring, a valuable pathway, is undermined by credit consequences that make continued trading difficult. Illegal phoenixing continues largely unchecked. Trusts with corporate trustees remain opaque and their insolvency treatment uncertain. And the complexity of the dual corporate and personal regimes, administered by separate regulators, drives up cost and drives creditors out of the processes that depend on their participation.

AICM's recommendations across these themes share a common purpose: to align the incentives in the insolvency framework with the behaviour that supports business dynamism. They are grounded in the daily experience of AICM members and, where possible, illustrated with member case studies. Many of the positions have been advanced consistently by AICM over more than a decade, and several align with the findings of the Commission's own 2015 inquiry and the 2023 Parliamentary Joint Committee inquiry into corporate insolvency.

A core structural reform AICM identifies is the harmonisation of the corporate and personal insolvency regimes under a single regulator. This is the foundation on which many of the other reforms depend: a simpler, clearer framework, consistently enforced, would improve creditor confidence, reduce the cost of insolvency, and restore the creditor engagement on which the integrity of the system relies. AICM recognises this is a substantial, long-term undertaking, and supports a staged approach that delivers interim improvements while working toward the more fundamental reform.

AICM's full recommendations are set out in the sections that follow and consolidated at Section 12. AICM would welcome the opportunity to discuss any aspect of this submission with the Commission.

2. About AICM

The Australian Institute of Credit Management has been the professional body for credit management in Australia for over 85 years. AICM represents approximately 3,000 individual members working in more than 1,300 companies, including 34 of the ASX 100 and global organisations across all industries and sectors. AICM is the only credit industry-specific Registered Training Organisation in Australia and administers the Certified Credit Executive accreditation.

AICM's members are the credit professionals who assess credit risk, set credit terms, manage the credit life cycle, make credit-granting decisions, and recover debts. They are the custodians of trade credit in Australian businesses. For the purposes of this submission, AICM speaks in particular for trade credit providers: businesses that supply goods and services on extended payment terms and that stand as unsecured creditors when a customer becomes insolvent. Collectively, AICM members manage an estimated $80 billion in trade credit, a figure drawn from Reserve Bank of Australia data and likely to be conservative.

Trade credit is a critical and often underappreciated form of business finance. It allows businesses to obtain goods and services on payment terms, funding their operations and growth without recourse to formal lending. The decisions credit professionals make about extending trade credit directly affect which businesses can enter markets, grow, and weather periods of difficulty. This gives AICM members a distinctive vantage point on the questions the Commission is examining: they see, in real time and across every sector, how the settings of the insolvency framework change the availability and terms of the credit that businesses depend on.

AICM has advocated for reform of Australia's insolvency system for more than a decade. AICM has engaged with the Productivity Commission previously, including the 2015 inquiry into Business Set-Up, Transfer and Closure, where the Commission's recommendations on limiting preference claims reflected positions AICM had advanced. AICM also gave evidence to the 2023 Parliamentary Joint Committee inquiry into corporate insolvency in Australia, as one of the few stakeholders representing creditors rather than insolvency practitioners. AICM has made numerous submissions to Treasury and other bodies on insolvency and bankruptcy reform, at times jointly with the Australian Finance Industry Association and the Australian Restructuring Insolvency and Turnaround Association, reflecting a collaborative and cross-sector approach to reform.

This submission draws on that history of advocacy and on the direct experience of AICM members, including case studies contributed through a member forum convened specifically to inform AICM's response to this inquiry.

3. The insolvency framework as a driver of credit behaviour

The design of the insolvency framework changes the behaviour of credit professionals in ways that determine whether businesses get the credit and support they need to enter the market, grow, and where necessary restructure and survive. The reforms AICM advocates in this submission are not solely about improving outcomes for creditors in formal insolvency processes. They are about changing the incentive structure so that extending credit and supporting financially distressed customers is less constrained, and that formal processes do not deter the credit relationships that underpin business activity.

The Productivity Commission's terms of reference identify the insolvency framework as a key determinant of business dynamism, shaping whether entrepreneurs take risks, whether viable businesses can restructure, and whether failed businesses exit efficiently. AICM submits that this framing, while correct, captures only part of the picture.

The insolvency framework does not only affect the behaviour of directors and insolvency practitioners. It directly and materially shapes the behaviour of trade creditors, the businesses that extend credit to fund the day-to-day trading of other businesses across every sector of the economy. The Reserve Bank of Australia's most recent dedicated analysis of trade credit (September 2013) estimated outstanding trade credit at over $80 billion at any one time. Given the growth in business activity since that estimate, the current figure is likely to be substantially higher. Trade creditors are significant providers of working capital. They are often the first to identify financial distress in a customer and they are in a position to either:

- support recovery
- encourage early engagement with trusted restructuring or insolvency advice, or
- accelerate failure depending on what the regulatory environment incentivises them to do

AICM represents the credit professionals who make these decisions daily. Our members assess creditworthiness, set terms, manage exposures, and when customers encounter difficulty decide whether to continue support. These are not passive administrative functions. They are active decisions that determine whether a business in difficulty gets the breathing room it needs or faces a withdrawal of supply that tips it into insolvency.

Our submission is organised around three conditions that the insolvency framework must satisfy to support efficient credit decisions and, by extension, business dynamism.

Condition 1: Extending credit with confidence

Extending trade credit to a new or growing business requires an assessment of risk. That assessment depends on the quality and accessibility of information about the prospective customer, the clarity of the legal structure under which they are trading, and a reasonable expectation that the credit relationship will not expose the creditor to disproportionate risk if the customer later fails. Where the insolvency framework creates information gaps, structural ambiguity or asymmetric penalties, credit professionals respond rationally by restricting credit, seeking additional security, or declining to trade on credit terms. Each of these responses is a barrier to the entry and growth of businesses that would otherwise be creditworthy.

Regulatory settings that undermine confident credit extension include:

- Inadequate disclosure of tax debts, which conceals a material indicator of financial stress and distorts the credit assessment of businesses that appear viable but carry hidden ATO liabilities
- Lack of clarity over trust structures, which creates risk that cannot be adequately priced and that often results in credit being declined or additional security being demanded
- Fragmentation of the insolvency regime across corporate and personal frameworks, which increases compliance complexity and cost without improving outcomes for any stakeholder

Condition 2: Supporting customers in financial difficulty without penalty

When a customer shows signs of financial stress, the credit professional is often the first counterparty to identify it. In that moment they face a choice: continue to work with the customer through a difficult period or restrict the provision of credit. The commercially rational response is often to continue, to negotiate, and to engage. A credit professional who remains engaged is also uniquely placed to encourage directors to seek advice early, including to engage with restructuring or insolvency professionals before options are exhausted. That early engagement is how all stakeholders benefit.

The current insolvency framework systematically discourages this response. A credit professional who continues to supply a customer subsequently found to have been insolvent at the time of payment faces a risk of a preference claim for payments, even where they acted in good faith and in the ordinary course of business. The knowledge that payments received during a period of financial uncertainty may be clawed back causes credit professionals to mitigate risk rather than provide support. The mitigations are well-documented in AICM members' experience and include:

- Requiring additional security from the customer
- Requiring cash in advance or cash before delivery terms
- Reducing credit limits or imposing more complex repayment arrangements
- Stopping supply entirely

These responses are individually rational but collectively damaging. They reduce the support available to a business at the moment it most needs it, overload it with new obligations at a time when it is already under pressure, and close off the pathway to early engagement with formal restructuring. The framework designed to protect creditors collectively is, in practice, preventing individual creditors from acting in ways that would benefit everyone, including the distressed business.

Condition 3: Formal processes that are genuinely efficient

Where a business cannot be saved and formal insolvency processes are unavoidable, the framework should minimise time, cost and complexity, ensuring resources are directed toward outcomes that serve the purposes of insolvency. Inefficiency falls disproportionately on unsecured creditors through reduced returns and extended uncertainty. It also reinforces the credit behaviour described above: if formal processes are expensive and unpredictable, credit professionals price that risk into their terms or avoid higher-risk customers altogether (such as new businesses and those in trust structures), reducing credit access for the businesses the system is meant to support.

Current inefficiencies that AICM members identify include:

- Preference claim litigation that consumes administration funds and practitioner time without improving returns to creditors
- Reporting and statutory obligations on practitioners that generate compliance cost without providing meaningful benefit to creditors or other stakeholders
- Complexity or lack of clarity in legislation that requires costly legal advice or court approval for matters that should be straightforward
- Underdevelopment of the Small Business Restructuring pathway as a genuine alternative to administration and liquidation for viable small businesses
- Fragmentation across regulatory bodies with overlapping and inconsistent oversight
- Ongoing costs imposed on administrations by illegal phoenixing and pre-insolvency misconduct
- Absence of effective creditor engagement mechanisms in formal processes, reducing creditor confidence and participation

4. Unfair preference claims

4.1 The problem

The unfair preference claims regime is the single area of insolvency law that most directly and consistently changes the behaviour of credit professionals toward customers showing signs of financial distress. Its effects are immediate, concrete and well-documented by AICM members: it causes credit professionals to withdraw support, demand additional security, and reduce or cease supply at precisely the moment a distressed business most needs continuity.

Conceptually, the regime has a sound rationale: to prevent a company on the verge of insolvency from preferring one creditor over others. In practice, as applied to unrelated arm's length creditors acting in the ordinary course of business, it operates as a penalty on commercially responsible behaviour and a disincentive to the kind of creditor engagement that supports business recovery.

The core problem is the risk profile the regime creates. When a customer shows signs of financial stress, a credit professional who supports the customer's ability to navigate short-term pressures through continued supply and payment arrangements exposes themselves to risk of a preference claim if the customer subsequently enters liquidation. The claim period is three years from the commencement of liquidation, routinely extended by the courts. The indicia triggering liability includes suspicion of insolvency, a standard that most experienced credit professionals will meet simply by doing their job well. The result is that good credit management practice generates legal liability. The regime that was designed to protect the collective body of creditors actively discourages the individual creditor behaviour that would give a distressed business the best chance of avoiding insolvency altogether.

The statistical evidence reinforces the problem. ASIC data shows that in 91.4% of insolvencies with amounts owed to unsecured creditors, those creditors receive zero cents in the dollar, a figure virtually unchanged from 92.1% in 2018 to 2019. The exposures at stake are substantial: in 2024 to 2025, more than 54% of these insolvencies involved over $100,000 owed to unsecured creditors. AICM members report that they have yet to observe a preference claim recovered by a liquidator that resulted in a meaningful distribution to creditors. The recovered funds are absorbed by the cost of the claim itself, including liquidator fees, legal costs and administration expenses. The regime is not, in practice, improving returns to creditors. It is redistributing loss from the administration to creditors who did nothing wrong, and deterring the commercial behaviour that might have prevented the insolvency from occurring.

4.2 Impact on credit behaviour and business dynamism

The behavioural consequences of the current regime are directly relevant to the Commission's inquiry. Where the preference regime creates risk for arm's length creditors acting in good faith, credit professionals take rational steps to mitigate that risk. Those steps include:

- Reducing credit limits or tightening terms when a customer shows signs of distress, even where the credit professional would otherwise be willing to continue support
- Requiring cash in advance or cash before delivery, removing the working capital benefit of trade credit at the point the customer most needs it

- Requiring additional security, personal guarantees, charges over assets, that delays or prevents the creditor providing assistance
- Stopping supply entirely, which can trigger the very insolvency the credit professional and customer were both seeking to avoid
- Avoiding early engagement with the customer about financial difficulties, because the conversation creates a record of 'suspicion of insolvency' that may later be used against the creditor in preference claim proceedings

That last consequence is particularly damaging. A credit professional who suspects a customer is in difficulty is often best placed to encourage early engagement with restructuring or insolvency advice, the kind of early intervention that gives viable businesses the best chance of survival. The current regime actively deters this. The credit professional who raises the issue of financial distress with a customer, negotiates a repayment arrangement, or encourages the director to seek advice is building a record that may later be used to establish that they 'ought to have suspected' insolvency at the time of any subsequent payments. The law as currently designed treats responsible credit management as evidence of liability.

For the Commission's purposes, these effects operate as a structural barrier to business dynamism. They restrict access to trade credit for businesses under financial pressure, increase the cost and conditionality of that credit, and close off the pathway to early restructuring that would allow viable businesses to survive and continue to grow.

4.3 AICM's position and recommendations

AICM's primary position is that unfair preference claims against unrelated creditors acting in the ordinary course of business should be abolished. The regime serves no creditors well in this context: it does not improve distributions to the creditor body, it funds administration costs at creditors' expense, and it deters the commercial behaviour that would benefit distressed businesses and their creditors alike.

AICM acknowledges that abolition represents a significant structural change and that the Commission may consider it more appropriate to recommend a staged reform. With that in mind, AICM supports the following reforms, presented in order of priority. The interim measures would materially improve the current position; however AICM's preference is for reform that goes to the root of the problem.

AICM RECOMMENDS

> **4.1 Payments received by unrelated creditors in the ordinary course of business should be exempt from unfair preference claims. Where an unrelated creditor has not used unlawful pressure, intimidation or a position of undue influence to obtain payment, there should be no basis for a preference claim, regardless of the timing of the payment relative to insolvency.**

For clarity, 'ordinary course of business' in AICM members' view encompasses all lawful and commercially reasonable actions that a creditor at arm's length would take to recover a valid debt, including issuing demands, stopping supply, and commencing legal action. It does not include conduct involving intimidation, harassment or the exploitation of a position of undue influence.

This reform would eliminate the perverse incentive structure described above. A credit professional who can continue to engage with a distressed customer without fear of a future preference claim is a credit professional who can continue to supply, negotiate, and encourage early engagement with restructuring advice. That outcome serves the customer, the creditor, and the wider economy.

AICM RECOMMENDS

> **4.2 As an interim step, the limitations currently applicable under the simplified liquidation process, which restrict preference claims against unrelated creditors to payments above $30,000 made within three months of liquidation, should be extended to all insolvency proceedings, not only simplified liquidations.**

The Morrison Government's unenacted 2022–23 Budget measures proposed precisely this extension. The case for it has only strengthened since. Limiting the scope of preference claims in ordinary liquidations would reduce the deterrent effect on creditor support while the broader structural reform is considered.

AICM RECOMMENDS

> **4.3 The period within which a liquidator may bring a preference claim against an unrelated creditor should be reduced from three years to 12 months from the commencement of liquidation. Court extensions should only be available in cases of genuine complexity or where there is clear evidence of misconduct.**

Only 9.8% of administrations were expected to take more than 12 months to complete (ASIC, 2018–19). A three-year claim window is therefore not justified by the operational requirements of most liquidations. It extends creditors' exposure well beyond what the administration process requires, during which time records are lost, staff turn over, and the cost of defending a claim mounts. It also creates an incentive for liquidators to delay, the longer the delay, the harder it is for the creditor to reconstruct the evidence needed to establish a defence.

AICM RECOMMENDS

> **4.4 The indicia of a preference claim against an unrelated creditor should require actual knowledge of insolvency, not suspicion or constructive knowledge. A creditor who suspects, or ought to have suspected, insolvency, but had no confirmed knowledge, should not be exposed to a preference claim for payments received in the ordinary course of business.**

This change would allow credit professionals to engage openly with customers showing signs of distress. Under the current standard, a credit professional who monitors signs of insolvency, maintains records of customer financial difficulties, and takes protective steps is building the evidentiary case for their own liability. Requiring actual knowledge removes that disincentive and restores the credit professional's ability to support distressed customers without self-incrimination.

AICM RECOMMENDS

> **4.5 The burden of proof in preference claim proceedings against unrelated creditors should be explicitly stated to rest on the liquidator, including the obligation to substantiate the claim from first demand. Liquidators should be required to review records, validate the basis for a**

> **claim, and engage in open and honest discussions with creditors before issuing demands.**

The ability to issue 'scatter-gun' demands to any creditor who received a payment within the relation-back period, without prior investigation into the validity of the claim, should be prohibited. This imposes significant cost and uncertainty on creditors who have done nothing wrong and forces settlement purely to avoid the cost of defending a claim. Explicit burden of proof requirements and a substantiation obligation at first demand would reduce unmeritorious claims and the costs they impose on administrations and creditors.

4.4 The funding question

AICM acknowledges the argument that preference claim recoveries fund the insolvency process and that removing or limiting them would reduce the resources available to liquidators to do the work AICM members value, such as ensuring an orderly wind up and investigating creditor defeating transactions. This is a legitimate concern and one that AICM has addressed in prior submissions. However, it does not justify the current regime.

The cost of funding insolvency administrations through preference claims against unrelated creditors is imposing further burden on the creditors who are already victims of the insolvency. They receive no distribution in over 91% of cases, and in those cases where preference claims are pursued, the recovered funds rarely reach them, being absorbed by the costs of the claim itself. Unsecured creditors are, in effect, being taxed to fund a process from which they derive limited benefit.

Broader efficiency reform of the liquidation process would itself reduce the funding problem. Many of the costs that preference claim recoveries currently underwrite, practitioner time, legal fees, court processes, are driven by legislative complexity, unclear obligations, and procedural requirements that add cost without improving outcomes. Reforms that streamline the liquidation process, reduce unnecessary statutory obligations, and clarify the legislative framework would reduce the cost base that preference claim recoveries are expected to fund. A more efficient process requires less funding and reduces the dependence on preference claim recoveries as an administration funding mechanism.

AICM also supports consideration of dedicated alternative funding mechanisms, including enhanced access to the Assetless Administration Fund and reform of the fee and disbursement framework for small liquidations. These mechanisms would address the residual funding question directly, without imposing its cost on the creditors who are least able to bear it.

5. Insolvent trading and safe harbour

5.1 The insolvent trading problem

Insolvent trading is pervasive in Australia. In 2024 to 2025, external administrators reported possible insolvent trading breaches under section 588G in 81.4% of reports, and this proportion has risen steadily, from 66.4% in 2020 to 2021. Despite this, enforcement is rare. ASIC rarely prosecutes, and claims by liquidators are often not pursued due to commerciality: the costs are high and the risk of liabilities being uncollectable is significant. From a business dynamism perspective this is doubly damaging: it distorts competition by allowing insolvent businesses to continue operating on credit they cannot repay, and it erodes creditor confidence in extending trade credit to businesses in the sectors and size ranges most affected, especially small businesses.

Without a meaningful deterrent, directors continue trading, incurring liabilities to suppliers and service providers, and the creditors to whom those liabilities are owed bear the loss with no recourse. AICM members consistently identify the non-enforcement of insolvent trading as a direct cost to their businesses and a structural barrier to providing trade credit support to financially stressed customers. A director who knows that insolvent trading will not be enforced will not engage early with the hard decisions needed when insolvency looms. The result is that businesses that might have been viable with early intervention instead trade deeper into insolvency, accumulating debt with creditors who have little means of protecting themselves.

Directors operating in this environment tend to fall into one of three patterns:

- Optimism, continuing to trade in a genuine but unrealistic belief that conditions will improve, without seeking advice
- Rational disengagement, recognising that personal liability from insolvent trading is small relative to their broader exposure on liquidation, leaving no incremental deterrent
- Active evasion, trading under guidance from unregulated pre-insolvency advisors who facilitate asset stripping and creditor avoidance rather than genuine restructuring

All three patterns produce the same outcome for creditors: deepening loss, reduced prospects of recovery, and a reduced willingness to extend credit in future.

5.2 Safe harbour: intent and current limitations

AICM supports the policy intent of the safe harbour provisions introduced in 2017. The regime recognises that directors of genuinely viable businesses should be able to seek restructuring advice and take steps to recover without the immediate threat of personal liability driving them into formal administration prematurely. That early engagement, supported by qualified arm's length advice, is precisely the kind of intervention that can preserve business value, protect creditor relationships, and avoid unnecessary formal insolvency.

In practice, however, the safe harbour regime has significant limitations that reduce its effectiveness and, in some cases, create risks for creditors.

The first is the interaction with unfair preferences. Creditors who continue to supply a business during a safe harbour period, exactly the behaviour the safe harbour is designed to encourage, remain exposed to preference claims for payments received during that period. This creates a direct conflict between the safe harbour's objectives and the preference regime's incentive structure: directors are encouraged to continue trading and paying creditors, but those same creditors are penalised for receiving payment. AICM has consistently advocated that creditors supporting a genuine safe harbour restructuring should be protected from preference claims arising from that support.

The second is the risk of misuse. Where the safe harbour can be invoked without genuine prospects of recovery and without meaningful external oversight, it can be used to extend insolvent trading under the guise of restructuring, deepening creditor losses before an inevitable liquidation. Without creditors' interests being explicitly included in the 'better outcome' analysis that underpins the safe harbour defence, there is insufficient protection against this outcome.

The third is awareness. AICM members report that awareness of the safe harbour among directors remains low, and that take-up is correspondingly limited. A regime that exists but is not used does not achieve its policy objectives. There is no systematic data collection on safe harbour engagements, making it difficult to assess uptake, success rates, or the extent to which the regime is achieving its intended purpose.

5.3 AICM's position and recommendations

AICM's position on insolvent trading and safe harbour has two complementary elements: stronger enforcement of the insolvent trading prohibition, and reform of the safe harbour to make it more accessible, more creditor-aware, and more clearly bounded.

On enforcement, the current environment, where insolvent trading is widespread but rarely prosecuted, serves no one well. It does not protect creditors, it does not deter directors from deepening losses, and it removes the incentive for early engagement that would benefit all stakeholders. Stronger enforcement, supported by a dedicated insolvency regulator with the mandate and resources to act, is the foundation on which all other reforms rest.

AICM RECOMMENDS

> **5.1 The insolvent trading prohibition should be actively and consistently enforced. AICM supports the establishment of a dedicated insolvency regulator with a clear mandate to investigate and pursue insolvent trading, including the authority to take action against directors whose companies generate minimal returns to unsecured creditors. Enforcement should be a genuine deterrent, not a theoretical liability.**

On the safe harbour, AICM supports implementation of the recommendations of the Independent Review of Safe Harbour Arrangements (2021) as a baseline. Beyond those recommendations, AICM identifies the following as priorities:

AICM RECOMMENDS

> **5.2 Creditors' interests should be explicitly included in the 'better outcome' analysis that underpins the safe harbour defence. A safe harbour that improves outcomes for directors at the expense of creditors, by extending trading that deepens creditor losses before an inevitable liquidation, is not achieving its policy objectives. The better outcome test should require consideration of creditor outcomes, not only the prospects for the company.**

AICM RECOMMENDS

> **5.3 Creditors who continue to supply a business during a safe harbour period should be protected from unfair preference claims for payments received during that period.**

AICM RECOMMENDS

> **5.4 Data collection on safe harbour engagements should be mandated through existing liquidator and voluntary administrator reporting obligations. Without reliable data on uptake, outcomes, and the profile of businesses accessing the safe harbour, it is not possible to assess whether the regime is working or to identify where further reform is needed. The 2021 Safe Harbour Review recommended this; it has not been implemented.**

5.4 The enforcement gap and its effect on credit behaviour

The failure to enforce the insolvent trading prohibition has a direct and measurable effect on credit behaviour. Where directors know that insolvent trading will not be pursued, they have less incentive to engage with creditors honestly about financial difficulties and less reason to seek advice before their position becomes irretrievable. Creditors, for their part, know that the protection the insolvent trading prohibition nominally provides is largely illusory.

The result is a less trusting, more defensive credit environment. Credit professionals who cannot rely on the prohibition to deter continued trading will price that risk into their terms, require additional security, or restrict credit to businesses in sectors or size ranges associated with higher insolvency rates. These responses collectively reduce the availability and affordability of trade credit for the businesses, particularly small businesses, that most need it to enter, grow, and where necessary restructure.

Effective enforcement of the insolvent trading prohibition, combined with a safe harbour that is genuinely accessible and clearly bounded, would restore some of the confidence that credit professionals need to extend trade credit generously. It would create the incentive structure that the current regime nominally provides but does not deliver: directors who engage early, seek advice, and work transparently with creditors are protected; directors who trade recklessly at creditors' expense are not.

6. ATO tax-debt transparency

6.1 Progress made and work still to do

The ATO is a creditor in approximately 74% of corporate insolvencies, and historically the largest creditor in many of those. The scale of outstanding tax debt is significant: ATO collectable debt grew from $26.5 billion in June 2019 to $54.2 billion at 30 June 2025, with the small business sector accounting for more than 66.2% of collectable debt in 2025. Where this debt is not visible to trade creditors, credit decisions are made on an incomplete picture of a customer's financial position, with consequences for the quality of those decisions and the losses that flow when businesses fail.

Meaningful progress has been made since the disclosure framework was introduced through the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act. After a slow start, the ATO has materially increased its use of disclosure powers. Over 36,000 business tax debts were disclosed to credit reporting bureaus in the 2023–24 financial year, and the ATO has signalled that disclosures will continue to be a key part of its debt collection approach. AICM, AFIA and ARITA jointly supported the measure when it was legislated, and the increased volume of disclosures is a positive development that is improving the information available to credit professionals.

The disclosure framework is working better than it was, but it is not working well enough. Two structural features of the current design continue to produce significant information gaps for credit professionals, and the consequences of those gaps are still being experienced by AICM members. The framework that was intended to put tax debt on the same footing as other commercial defaults has not achieved that outcome, and the reforms needed to do so are specific and achievable.

6.2 The two remaining structural failures

The first structural failure is the disclosure threshold. At $100,000 in overdue and undisputed tax debt, the threshold captures only a fraction of the businesses that carry material tax risk. The scale of this gap is evident in the insolvency data: in 2024 to 2025, 26.1% of businesses entering external administration owed the ATO between $1 and $100,000, debts that fall below the disclosure threshold and so would never have appeared on a credit file. Many of the businesses that enter insolvency with significant tax debt do so with amounts below this threshold, and it is precisely those businesses, smaller, less capitalised, operating in higher-risk sectors, where credit professionals have least access to other information that would indicate the risk. A threshold set at a level that excludes a very large proportion of the relevant population does not achieve the purpose of the framework.

The second, and more significant, structural failure is the treatment of disclosures once the criteria are no longer met. For example, under the current framework, when a business enters into a payment arrangement with the ATO, the tax debt disclosure is removed from the credit file. This means that a business can carry a material tax debt, have it disclosed, enter into a payment arrangement, have the disclosure removed, leaving trade creditors with no record of the episode. The debt that triggered disclosure effectively disappears, and the business re-enters the credit market presenting the same profile as one that has never carried a tax default.

It is not that the ATO should not support businesses through repayment arrangements, that support is appropriate and AICM endorses it. The problem is that treating the fact of a material tax default as though it never occurred gives a false picture of the business's credit history. A business that has met the disclosure requirements remains a materially different credit risk from one that has never had a tax default, regardless of whether the debt has been paid or subject to an arrangement. No other commercial default is treated this way: a default that is subsequently paid or subject to an arrangement is updated on the credit file to reflect the changed status, but it does not disappear.

Members have reported losses as a result of credit provided after a default had been removed, or extending credit at a level that is not in the best interest of the customer had the tax debt been known.

MEMBER CASE STUDY: TELECOMMUNICATIONS PROVIDER

> *A customer entered a payment arrangement with the ATO. The ATO default was then removed from the bureau file. When the customer reapplied for credit, the creditor obtained a credit report showing no outstanding debt and extended credit*

> *without knowing a significant ATO debt was outstanding and the customer had a history of not meeting its obligations. As the member noted: "Had the disclosure been on file we would have been able to provide credit to that customer knowing that they have a significant debt they're paying off under the ATO. If we were aware of that, we could have taken further steps to ensure the credit applied for allowed them capacity to pay down their debts with the ATO and manage a sustainable business."*

MEMBER CASE STUDY: TRADE CREDIT PROVIDER

> *A customer had been trading insolvent since April 2025. A credit limit was approved in November 2025, utilising trade credit insurance. The company went into administration two days later. It transpired the company had a large undisclosed ATO debt and had been paying it down, meaning the ATO was effectively the preferred creditor throughout the insolvency period. Liquidators are now pursuing trade creditors for preferences while the ATO's preferential position goes unchallenged.*

Credit professionals who cannot distinguish between businesses that are engaging with the ATO on manageable debt and businesses that are carrying unsustainable obligations continue to rely on ATO non-disclosure as a proxy for viability. That proxy remains unreliable.

While these features of the disclosure regime were not supported by AICM members, there is an understanding that this was a reasonable stepping stone to achieving the objectives. The use of the measure is now well understood and has shifted taxpayer behaviours, making it less necessary to have a system that encourages engagement only after disclosure is triggered. Changes proposed by AICM members will ensure that businesses engage before disclosure is triggered, which will not only drive improvement in collectable debt but play a significant role in encouraging early engagement with restructuring or insolvency advice.

6.3 AICM's position and recommendations

AICM supports the ATO using its enforcement discretion to provide genuine support to viable businesses experiencing temporary financial difficulty. However, variable enforcement must be accompanied by a framework that ensures trade creditors are not left without information that is material to their own decisions. The reforms needed to achieve that are straightforward.

AICM RECOMMENDS

> **6.1 The threshold for disclosure of business tax debts to credit reporting bureaus should be reduced from $100,000. Alternatively, a mechanism should be established for regular review of the threshold amount to ensure it remains fit for purpose over time. At $100,000, the threshold excludes the majority of businesses that carry material tax risk and provides no meaningful transparency for credit decisions involving smaller businesses.**

AICM members call for a threshold as low as $10,000, which would ensure transparency of businesses not meeting their tax obligations in a timely manner and take further steps to provide credit in a responsible way for their business and not overburden a business already unable to meet its obligations in a timely way.

AICM RECOMMENDS

> **6.2 Business tax debt information disclosed to credit reporting bureaus should remain on the credit file for five years from the date of disclosure. During this period, the record should be updated to reflect payments and arrangements in the same manner as any other commercial default. The record should be removed only if reported in error.**

This recommendation addresses the most significant remaining failure of the disclosure framework. A default that is subsequently paid or subject to an arrangement is updated to reflect the changed status but does not disappear, as this enables creditors to make fully informed responsible credit decisions. Creditors are entitled to know a history of non-compliance when making decisions about continued credit and supply.

AICM RECOMMENDS

> **6.3 The ATO should act as a model creditor, using its disclosure and enforcement powers transparently and consistently. Where the ATO exercises discretion not to enforce, it should do so in a way that considers impacts on trade creditors who do not have a fully informed understanding of the business's viability.**

6.4 Effect on credit behaviour and business dynamism

The implementation of the disclosure framework has had a measurable effect. Credit professionals with access to tax debt disclosures can make better-informed decisions, and the ATO's own reporting indicates that the disclosure process has been effective in encouraging businesses to engage with the ATO and address their obligations. This validates the policy intent of the framework.

For the Commission's purposes, these reforms support business dynamism by improving the quality of information on which credit decisions are made. Better information means credit extended more accurately to businesses that are genuinely creditworthy, less risk of vulnerable businesses being overburdened with unsustainable debt, and earlier engagement with businesses whose tax position warrants attention before it reaches a level that triggers formal insolvency. That is the outcome the framework was designed to achieve, and the reforms needed to deliver it more fully are targeted and practical.

7. Small Business Restructuring

7.1 A valuable pathway that is not yet working as intended

AICM supports the Small Business Restructuring (SBR) pathway and the policy objective behind it. A low-cost, flexible mechanism that encourages small businesses to engage in a restructuring process and continue trading, rather than proceeding directly to administration or liquidation, is precisely the kind of mechanism that supports business dynamism. The debtor-in-possession model, which keeps control of the business with its directors while a restructuring practitioner oversees the process, has clear advantages for speed and cost where it works well.

The pathway is being used, and its use is growing rapidly. ASIC's June 2025 review of the SBR process recorded 3,388 appointments between 1 July 2022 and 31 December 2024, up from just 82 in the regime's first 18 months, with appointments rising each year and expected to reach around 3,000 in 2024 to 2025 alone. Of the finalised plans in the review, 92% were fulfilled rather than terminated, and 93% of companies that fulfilled their plans remained registered shortly afterwards. AICM strongly supports the SBR pathway and welcomes these positive signs. The recommendations that follow are directed at ensuring the regime operates optimally and remains fit for the future, not at questioning its value.

The picture from AICM members is more complex. While the pathway is being used, credit professionals report that it frequently does not operate in a way that supports either the restructuring business or its trade creditors. The consistent theme is that the design of the SBR process gives credit professionals little confidence that their interests are protected, which drives the same defensive credit behaviour that this submission identifies across every reform theme: withdrawal of supply, demands for security, and a shift to cash-on-delivery terms at the moment the business most needs continuity of supply.

That confidence gap is now visible in the data. ASIC's review found that while 87% of plans were approved over the review period, the rate at which restructuring appointments converted into approved plans fell from 88% in 2022 to 2023 to 79% by the end of 2024, driven by a rise in creditors rejecting proposed plans from 9% to 14%. As creditor awareness of the process grows, so does creditor scrutiny of it. This makes the reforms that follow more important, not less: the pathway will only continue to succeed if creditors have confidence in it.

7.2 How the current design changes credit behaviour

The most immediate problem AICM members identify is that, unlike voluntary administration, there is no protection for creditors who continue to supply a business on credit terms during an SBR. A creditor supplying during the restructuring period has no certainty that they will be paid for that supply, and no protection from preference claims. The rational response is to withdraw credit and move the customer to cash-on-delivery, or to supply only the minimum necessary. This is the opposite of what the pathway is designed to achieve: an SBR is intended to allow a business to keep trading through the restructuring, but the credit consequences of an SBR appointment can make continued trading impossible.

A recent AICM member survey of those who had experienced an SBR found that members generally withdraw supply on credit terms on commencement, precisely because there is no certainty of payment as there would be in a voluntary administration. This is a direct and measurable barrier to the pathway achieving its purpose.

The problem is compounded by uncertainty over the definition of 'admissible debt', whether it is determined by the date of supply or the due date of the invoice. This ambiguity causes suppliers to place accounts on stop until a practitioner clarifies the position, creating unnecessary disruption to the very supply relationships the restructuring depends on.

MEMBER CASE STUDY: NATIONAL TRADE SERVICES ORGANISATION

> *A member operating a large trade services and supply organisation explained that SBR legislation does not give practitioners the power to exempt essential trade suppliers from the process, unlike external administration. This means vital*

> *suppliers are placed on stop when an SBR commences, which is more damaging than helpful to the restructuring. The same member noted that the grey area around the definition of admissible debt causes all suppliers to go on stop until the practitioner clarifies the position. The member will continue trading with SBR customers only where there is a good credit history, the SBR is approved and being maintained, and a personal guarantee backed by property is in place.*

MEMBER CASE STUDY: ELECTRICAL WHOLESALE SUPPLIER

> *A member operating an electrical wholesale business reported that no trade credit insurance is available on SBR customers. The member's policy is not to trade post-SBR unless branch managers specifically approve, with strict limits and security, and the member is not comfortable with it as a general matter. Another member reported requiring either a personal guarantee from the director or a cash deposit or bank guarantee before trading with a customer post-SBR.*

These responses are entirely rational given the current design, but they undermine the pathway. A restructuring process that causes essential suppliers to withdraw credit is working against its own purpose. The businesses most likely to survive an SBR are those that can maintain their trading relationships; the current design makes that harder, not easier.

7.3 Structural and integrity concerns

Beyond the immediate credit consequences, AICM members have identified a number of structural features of the SBR process that reduce creditor confidence and, in some cases, create opportunities for misuse. These concerns were set out in detail in AICM's submissions to the draft legislation and regulations, and they remain current.

The key concerns are:

- Debt values are not verified until the plan is put to creditors, meaning restructuring proposals are frequently based on understated debt figures. Where creditors are omitted or debts are understated, plans require variation, which increases cost and erodes confidence.
- There is no requirement for the business to have maintained good books and records as a condition of eligibility, which reduces the reliability of the information on which creditors assess a plan.
- Plan approval is by majority in value, which concentrates power in large creditors and can leave smaller trade creditors without an effective voice. AICM recommends alignment with the voluntary administration approach, where approval requires a majority in both number and value.
- The subjective nature of the 'ordinary course of business' test, combined with low transaction values and the cost of enforcement, means manipulation is difficult to deter or prosecute.

Underlying several of these concerns is the standing and qualification of the restructuring practitioner. Creditor confidence in an SBR depends heavily on confidence that the practitioner is appropriately qualified, independent, and able to protect creditor interests while navigating complex legislative requirements. AICM has consistently advocated that restructuring practitioners should be fully registered liquidators, or, at minimum, that any restricted registration be clearly disclosed so creditors understand the capacity in which the practitioner is acting.

7.4 The ATO as the dominant SBR creditor

A defining feature of the SBR pathway in practice is the dominance of the ATO as a creditor. ASIC's June 2025 review found the ATO was a creditor in 93% of companies that fulfilled a restructuring plan, and that of the more than $101 million distributed to unsecured creditors under fulfilled plans, approximately 87%, around $88 million, was paid to the ATO. Because a plan requires the support of more than 50% of creditors by value, the ATO effectively controls the vote in the majority of restructurings. The growth in SBR appointments is being driven substantially by ATO debt and enforcement activity.

This has a direct consequence for trade creditors. In many SBRs, trade creditors are being asked to compromise their debts in a process where the ATO is the dominant creditor and the principal beneficiary of the restructuring. The average return to unsecured creditors under completed plans in the review period was around 20 cents in the dollar. Members report experiencing SBRs in which they receive payment in full or a compromise while the ATO is the only creditor genuinely subject to the compromise, and others in which trade creditors compromise alongside the ATO with little ability to influence the outcome given the ATO's voting weight.

Where the ATO is the overwhelming majority creditor, there is a legitimate question, raised during the PJC inquiry, about whether the full SBR apparatus, with its associated practitioner costs, is the most efficient mechanism, or whether a more direct process between the business and the ATO would deliver better outcomes at lower cost. AICM does not take a fixed position on the mechanism, but observes that the current design imposes the cost and complexity of a general restructuring process on situations that are, in substance, a negotiation with a single dominant creditor.

7.5 AICM's recommendations

AICM's recommendations are directed at making the SBR pathway work as intended: enabling viable businesses to restructure while giving trade creditors the confidence to continue supporting them through the process.

AICM RECOMMENDS

> **7.1 Creditors who continue to supply a business on credit terms during an SBR should be protected. Credit extended during the restructuring period should be given priority, or payments to unrelated creditors prior and during the period should be explicitly exempt from being deemed voidable preferences in a subsequent liquidation. This protection will help credit professionals to justify continued supply on SBR commencement, maximising effective restructuring and long term viability.**

AICM RECOMMENDS

> **7.2 The definition of 'admissible debt' should be legislatively clarified to remove the current uncertainty over whether it is determined by date of supply or due date of invoice. This ambiguity causes suppliers to place accounts on stop unnecessarily and should be resolved.**

AICM RECOMMENDS

> **7.3 Debt values should be verified as early as possible in the SBR process, before a plan is put to creditors. This should be achieved by requiring a schedule of debts with the directors' declaration, lodged with ASIC and provided to creditors, and by allowing creditors to submit a proof of debt before a plan is proposed.**

AICM RECOMMENDS

> **7.4 Plan approval should be aligned with the voluntary administration process, requiring a majority in both number and value rather than value alone. This ensures smaller trade creditors retain an effective voice and are not overridden by a single dominant creditor.**

AICM RECOMMENDS

> **7.5 Restructuring practitioners should be fully registered liquidators. Where a restricted registration is permitted, it should be clearly disclosed on all communications so that creditors understand the capacity in which the practitioner is acting and can have appropriate confidence in the integrity of the process.**

AICM RECOMMENDS

> **7.6 Where a plan is terminated, creditors should vote on the next step, whether continued trading, voluntary administration, or liquidation, rather than the business defaulting to simplified liquidation or continuing to trade without oversight. This prevents the creation of debt-laden 'zombie companies' and ensures liquidation is a considered outcome rather than an automatic one.**

AICM also supports a comprehensive review of the SBR pathway to assess its operation against its objectives, informed by the data now available from several years of appointments. Any change to the $1 million liability threshold should only be considered as part of such a review, and with careful attention to the increased complexity and phoenixing risk that a higher threshold would introduce.

7.6 Effect on business dynamism

A well-functioning SBR pathway is directly aligned with the Commission's objective of efficient business exit and renewal. It allows viable businesses to survive a period of financial distress and continue contributing to the economy, and it provides an orderly, lower-cost alternative to liquidation for businesses that would otherwise fail. The reforms AICM recommends are directed at closing the gap between the pathway's intent and its operation.

The central point for the Commission is that the current design produces a self-defeating outcome: a restructuring process that causes the withdrawal of the trade credit the business needs to keep trading. Credit professionals want to support viable restructurings, doing so protects their existing exposure and preserves a customer relationship. The current design makes that support too risky. Protecting creditors who continue to supply during an SBR, clarifying the rules, and improving the integrity of the process would allow credit professionals to back viable restructurings rather than withdraw from them, which is the outcome that serves the business, its creditors, and the wider economy.

8. Harmonisation and a single regulator

8.1 Complexity as a barrier in its own right

Australia operates two separate insolvency regimes: corporate insolvency under the Corporations Act 2001, regulated by ASIC, and personal insolvency under the Bankruptcy Act 1966, regulated by AFSA. Whether a business failure is dealt with under one regime or the other depends on the legal form of the business, not its economic substance. Related functions are spread further still: the Personal Property Securities Register sits with AFSA rather than ASIC, the Fair Entitlements Guarantee has moved between departments repeatedly, and the ATO operates as a dominant creditor across both regimes.

For AICM members, this fragmentation is not an abstract structural concern. It is a practical, daily barrier that adds cost, delay and uncertainty to credit management and insolvency participation. The complexity of navigating two sets of legislation, two regulators, multiple processes with different time frames and requirements, and duplicated administration and investigation is a repeated theme in members' experience. A message AICM hears consistently is that the current regime is too complicated even for experienced credit professionals to navigate efficiently.

This complexity is itself a barrier to business dynamism. It raises the cost of every insolvency, reduces the returns available to creditors, deters creditor engagement with formal processes, and makes it harder for viable businesses to restructure and recover. Where the system is too complex for the people who use it most to navigate confidently, it is not serving its purpose.

8.2 The SME reality: intertwined personal and corporate debt

The division between corporate and personal insolvency is felt most acutely in the small business sector, where the boundary between the business and its owner is often indistinct. Small business directors routinely provide personal guarantees for company debts. When such a business fails, the director frequently faces both a corporate insolvency process for the company and a personal insolvency process for themselves, administered by two different regulators under two different bodies of law, often involving two different practitioners.

For the distressed small business owner, this is bewildering and expensive. It multiplies the cost of professional advice, extends the time to resolution, and makes early engagement less likely because the path through is so unclear. For the trade creditor holding a personal guarantee, it means engaging with two separate processes to pursue a single economic exposure. The division reflects the legal form of the business rather than its economic reality, and that mismatch imposes cost on everyone involved.

International practice increasingly recognises this. The World Bank's Principles for Effective Insolvency and Creditor/Debtor Regimes points to the need for simplified insolvency regimes for SMEs that allow all personal and business debts of an individual to be dealt with together. The United Kingdom administers both corporate and personal insolvency through a single Insolvency Service. Australia's continued division is increasingly out of step with the direction of comparable jurisdictions.

8.3 How complexity changes credit behaviour

Consistent with the through-line of this submission, the complexity of the insolvency framework directly affects how credit professionals behave. Where the rules governing an insolvency are complex and uncertain, and where asserting a creditor's rights requires legal advice that is not commercially viable for most trade creditors, credit professionals disengage. They write off exposures rather than pursue them, decline to challenge questionable practitioner decisions, and price the cost and uncertainty of the insolvency process into their credit terms.

The complexity also creates space for poor practice. AICM members regularly report creditors losing rights through incorrect application of legislation, incorrect handling of secured items due to poor understanding of the PPSA, and unfounded or scatter-gun preference claims. While most insolvency professionals act properly, the complexity of the legislation and the absence of compulsory professional standards mean that practices not in creditors' interests are able to persist. The root cause that AICM members return to is the same: the complexity of the legislation and the lack of clarity it creates.

Simplification would change this. A clearer, harmonised framework that creditors can understand and engage with confidently would improve creditor participation, reduce the cost of asserting rights, and increase the pressure on practitioners to act properly. It would also reduce the risk premium that complexity currently builds into credit terms, improving the availability and affordability of trade credit.

8.4 AICM's position and recommendations

AICM has advocated for harmonisation and a single insolvency regulator across multiple inquiries. AICM's position aligns with that of ARITA and a range of other bodies, and with the preliminary view of the Parliamentary Joint Committee on Corporate Insolvency, which found that unification of insolvency law under a single regulator would potentially deliver significant benefits.

AICM recognises that full unification of the two regimes under a single law is a substantial, long-term undertaking. AICM therefore supports a staged approach: pursuing the improvements that can be delivered sooner while working toward the more fundamental reform.

AICM RECOMMENDS

> **8.1 A holistic review, modernisation and alignment of the corporate and personal insolvency regimes should be undertaken, with the objective of a single, coherent insolvency framework that is clear for all stakeholders to understand and engage with. This review should address both regimes in the same process, recognising that they operate as a single system for many businesses, particularly SMEs.**

AICM RECOMMENDS

> **8.2 A single insolvency regulator should be established with responsibility for both corporate and personal insolvency. Consolidating regulatory responsibility would remove duplication, improve regulatory engagement and enforcement, reduce cost to the community, and provide a single, coherent point of oversight for the insolvency system. Where a single regulator is established, consideration should be given to**

consolidating related functions, such as the Personal Property Securities Register, within it.

AICM RECOMMENDS

8.3 Pending broader reform, immediate steps should be taken to reduce fragmentation, including co-locating policy responsibility for corporate and personal insolvency within a single Commonwealth department and aligning the processes, time frames and requirements of the two regimes wherever possible. These measures would deliver benefits in the near term without waiting for the full reform to be designed and implemented.

AICM notes that greater alignment was attempted through the Insolvency Law Reform Act 2016, which introduced many bankruptcy processes into corporate insolvency. However, the two regimes began to drift apart again as each regulator sought amendments to suit its particular approach. This experience reinforces the case for a single regulator: alignment achieved through parallel legislation administered by separate regulators is difficult to sustain, whereas a single regulator administering a single framework removes the source of the drift.

8.5 A foundation for other reforms

Harmonisation and a single regulator are not standalone reforms. They are the foundation on which many of the other reforms in this submission depend. A single regulator with a clear mandate to enforce insolvent trading, pursue illegal phoenixing, and oversee the conduct of practitioners would give effect to the enforcement AICM calls for in earlier sections. A clearer, simpler framework would reduce the legislative complexity and reliance on court processes and legal advice that AICM identifies as a driver of insolvency cost and creditor disengagement throughout this submission.

For the Commission's purposes, harmonisation addresses business dynamism at the level of the system itself. A framework that is simpler, cheaper to navigate, and consistent across the corporate and personal divide would reduce the cost of business exit, improve the prospects of business rescue, and restore the creditor confidence on which the extension of trade credit ultimately depends. It is the single most significant structural reform available to improve the efficiency of the insolvency system as a whole.

9. Illegal phoenixing

9.1 The cost of phoenixing to creditors and the economy

Illegal phoenixing, the deliberate liquidation of a company to avoid paying its debts followed by the transfer of its business to a new entity, imposes a substantial and direct cost on trade creditors. The 2018 report prepared for the ATO, ASIC and the Fair Work Ombudsman estimated the annual cost of potential illegal phoenix activity at between $2.85 billion and $5.13 billion, with the direct cost to business creditors through unpaid trade debts estimated at up to $3.2 billion. This is a cost borne overwhelmingly by unsecured trade creditors, the businesses AICM members work for, and their experience is that the incidence of illegal phoenixing has not slowed since the 2018 report.

Beyond the direct financial loss, phoenixing distorts competition and undermines business dynamism. A phoenix operator who sheds debts and re-emerges debt-free competes unfairly against businesses that meet their obligations. It also erodes the trust on which trade credit depends: where credit professionals cannot be confident that a director's past conduct is visible to them, they price that uncertainty into their terms or withhold credit altogether, penalising the honest majority for the conduct of a minority.

9.2 Enforcement, not new offences

AICM's central position on phoenixing is longstanding and consistent with the view expressed by the Productivity Commission in its 2015 report: the law is not primarily what is lacking, enforcement is. The Corporations Act already contains numerous provisions that are commonly breached in the course of phoenix activity, including the obligations to maintain proper books and records and to assist an external administrator. Director disqualification, fines and compulsory winding-up already exist as sanctions. The problem is that these provisions are not enforced with sufficient frequency or consequence to deter the conduct.

AICM members express persistent frustration at the perceived lack of enforcement. Members recall directors involved in alleged illegal phoenixing receiving penalties as low as a few hundred dollars, a trivial price relative to the financial benefit of the conduct. Where enforcement is rare and penalties are low, the rational calculation for a would-be phoenix operator favours the conduct. The deterrent effect that the existing law is supposed to provide simply does not operate.

This connects directly to AICM's call for a single, properly resourced insolvency regulator in Section 8. A dedicated regulator with the mandate, resources and focus to investigate and pursue phoenixing would give the existing law the teeth it currently lacks. AICM supports a hard-line approach to the regulated advisers, directors and promoters who display behaviours designed to deny creditors access to assets, both to deter the conduct and to provide clear conduct parameters for all parties.

9.3 Director identification and the linkage gap

AICM strongly supported the introduction of Director Identification Numbers (director ID) as a measure to combat phoenixing, and welcomes their implementation. A unique, verified identifier for every director makes it materially harder to use fictitious identities or to obscure a director's history of involvement in failed companies. The reform is a genuine and valuable step forward.

However, director ID is not, on its own, a solution. As other stakeholders have observed, it is an important tool but not a silver bullet. Its effectiveness depends on the information it captures being visible and usable by those who need it, and this is where a significant gap remains. For a credit professional assessing a prospective customer, the value of director ID lies in being able to link a director to their history, including prior involvement in companies that failed leaving creditors unpaid. That linkage is not currently available to credit providers in a usable form.

The gap is compounded by the treatment of ATO tax debt discussed in Section 6. Where a company is wound up owing tax and the director establishes a new entity, the connection between the two, and the pattern of leaving the ATO or other creditors unpaid, is not readily detectable by trade creditors assessing the new entity. Closing this gap would allow credit professionals to identify the warning signs of phoenix conduct before extending credit, which is precisely the point at which they are able to protect themselves.

9.4 Pre-insolvency advisers

A significant driver of illegal phoenixing is the role played by unregulated pre-insolvency advisers who facilitate the conduct and advise directors on how to strip assets, avoid creditors, and re-establish debt-free. These advisers operate largely outside the regulatory perimeter that applies to registered liquidators and other professionals, and they are rarely held to account. Any effective response to phoenixing must address the advisers who enable it, not only the directors who act on their advice.

AICM supports measures that bring pre-insolvency advisers within an appropriate regulatory framework and that impose meaningful consequences on advisers who facilitate the denial of creditor assets. This is consistent with AICM's broader position that the conduct of all participants in the insolvency system must be subject to standards that protect creditor interests.

9.5 AICM's recommendations

AICM RECOMMENDS

> **9.1 The existing laws that address phoenix conduct should be actively and consistently enforced, with meaningful penalties. AICM does not consider that new offences are the priority; the priority is enforcement of the substantial body of existing law, supported by a dedicated insolvency regulator with the mandate and resources to investigate and pursue phoenix activity.**

AICM RECOMMENDS

> **9.2 The value of the Director Identification Number regime should be realised by making director history usable for credit risk assessment. Credit professionals should be able to identify a director's prior involvement in failed companies, including companies wound up leaving creditors or the ATO unpaid, so that the warning signs of phoenix conduct are visible before credit is extended.**

AICM RECOMMENDS

> **9.3 Pre-insolvency advisers who facilitate illegal phoenix activity should be brought within an appropriate regulatory framework and subject to meaningful consequences and/or prosecuted under existing frameworks such as providing unlicenced or illegal tax and financial advice. Addressing the advisers who enable phoenixing is essential to any effective deterrent.**

AICM RECOMMENDS

> **9.4 A hard-line enforcement approach should be taken to directors, advisers and promoters who display behaviours designed to deny creditors access to assets. Clear conduct parameters and consistent**

enforcement would both deter the conduct and provide certainty for the honest majority.

9.6 Effect on credit behaviour and business dynamism

Phoenixing directly undermines the confidence on which trade credit depends. Every phoenix that succeeds is a signal that a director's history may be concealed, that a company's assets may be stripped before creditors are paid, and that the law will not intervene. The rational response from credit professionals is defensive: tighter terms, more security, and reduced credit availability, imposed on all customers because the dishonest minority cannot be reliably identified. The response from directors and pre-insolvency advisers is to continue to engage in this activity.

Effective enforcement, combined with usable director identity information, would reverse this. If credit professionals can identify the warning signs of phoenix conduct and have confidence that egregious conduct will be pursued, they can extend credit more confidently to the honest majority. For the Commission's purposes, addressing phoenixing is not only about penalising misconduct; it is about restoring the trust that allows trade credit to flow to the businesses that deserve it, which is fundamental to business entry, growth and fair competition.

10. Trusts with corporate trustees

10.1 Trading with trusts is one of the hardest areas of credit management

Trading with trusts is one of the most complex, time-consuming and risky areas of credit management. Trust structures are the preferred model for many small businesses, but the way they interact with the credit system and the insolvency framework creates significant difficulty for the credit professionals who extend credit to them, and ultimately for the small businesses that operate through them.

The core problem is that a trust does not have the same transparency as a company. There is no central register of trusts equivalent to the ASIC company register. When a business trades through a trust, the credit professional often cannot readily identify the trustee, the beneficiaries, or the terms of the trust deed. It is very common for a business owner to provide only a trading name and to be unable to identify their own legal structure or produce the trust deed. This is not a criticism of business owners; trusts are complex and not intuitively understood. But it creates barriers to efficient and fully informed credit decisions along with an increased propensity for creditors to require additional security than for other corporate structures.

The consequences follow the same pattern seen throughout this submission. Because the risks and inefficiencies of trading with trusts cannot be readily managed, credit professionals mitigate them by offering less favourable credit terms than they would to a company or sole trader, demanding additional security such as personal guarantees and charges over personal assets, or refusing to trade on credit terms with trust structures at all. Each of these responses is a barrier to the small businesses that legitimately operate through trusts, restricting their access to credit and their ability to compete on equal terms.

10.2 Two distinct problems

AICM identifies two related but distinct problems with the treatment of trusts, each requiring its own response.

The first is transparency in trading and credit assessment. The absence of a central source of truth for trust structures means credit professionals must undertake multiple searches, make assumptions, and query customers' accountants to determine the correct legal structure. This work requires experienced staff, cannot be automated, and still frequently produces errors in credit assessment and exposure calculation. It also obscures a credit provider's view of an entity's total debt exposure, limiting the ability to identify small businesses that are becoming over-indebted. For every other trading structure, this information is available through established government sources and credit bureaus.

The absence of a register also creates a loophole that can be used to defeat creditors. The trustee and the terms of a trust deed can be fundamentally changed to the detriment of creditors, with no systematic way for creditors to be notified. This is one of the risks that credit professionals currently mitigate by demanding personal guarantees and additional security.

The second problem is the treatment of trusts once a business becomes insolvent. The insolvency of a trust with a corporate trustee is largely governed by common law precedent rather than clear legislation. This drives up litigation and cost, because questions that are settled for companies must be resolved through court processes for trusts. Most insolvencies involving trusts are relatively simple, yet the lack of a clear statutory framework means court applications that add no value are routinely required. This cost falls on creditors and reduces the returns available to them.

10.3 A national trust register

AICM's primary recommendation to address the transparency problem is the establishment of a national register of trading trusts. The register would record the key details of any trust that engages in transactions with third parties, at a minimum the trustee, the beneficiaries and the current trust deed, and would give legal effect to the entity once registration is completed. The concept is directly analogous to the way the Personal Property Securities Register gives legal effect to security interests: validity on registration.

Such a register would deliver benefits across the credit and insolvency system:

- Clarity in contracting, by providing a single source of truth for the legal entity a creditor is dealing with, avoiding the errors that currently prevent parties from enforcing contractual obligations and the legal costs incurred to identify the correct entity
- Better access to credit for small businesses operating through trusts, by reducing the reliance on less favourable terms, additional security, and refusals to trade, and aligning the contracting risk of trusts with other corporate structures
- More accurate, responsible credit assessment, by allowing data from government, credit bureaus and other sources to be matched reliably to the correct entity, improving the visibility of total debt exposure and helping to identify over-indebted businesses before they fail

- A reduction in the use of trusts to defeat creditors, by closing the loophole that currently allows trustees and trust deeds to be changed without notice to creditors

A trust register could be established by leveraging the capability developed through the Australian Business Registry Services and the Personal Property Securities Register, with linkages to ABN and company registers. The benefits are substantial and the register should be pursued.

AICM RECOMMENDS

> **10.1 A national register of trading trusts should be established, recording at a minimum the trustee, beneficiaries and current trust deed, with accompanying legislation that gives legal effect to the trust on registration. The register should draw on the model of the Personal Property Securities Register and link to existing ABN and company registers.**

10.4 Clarifying the treatment of insolvent trusts

AICM's primary recommendation to address the insolvency problem is that the Corporations Act be amended to expressly clarify the treatment of trusts with corporate trustees during insolvency. This position is consistent with the near-universal support recorded by the Parliamentary Joint Committee on Corporate Insolvency, which recommended precisely this amendment, and with the Treasury consultation on clarifying the treatment of trusts.

AICM's position on the detail of that treatment, developed in response to the Treasury consultation, is as follows:

- The corporate insolvency framework should expressly provide for the external administration of insolvent trusts with a corporate trustee, aligning their treatment with other corporate entities
- Legislation should provide certainty as to when a trust is insolvent, applying the same cash-flow test that applies to companies, which reduces cost and ambiguity in establishing creditor rights including in relation to voidable preferences
- An insolvency practitioner's power to administer trust assets and liabilities should be expressly provided for in legislation, granted automatically, and able to prevail over the terms of the trust deed
- The same practitioner should be able to administer both the company and the trust assets and liabilities without requiring court approval, since conflict is unlikely to arise in most appointments and existing conflict-management rules would apply
- The statutory order of priority in the winding-up of a trust should replicate the regime for companies
- Ejection clauses and clauses limiting a trustee's right of indemnity should be automatically limited on the commencement of an insolvency process, with the practitioner able to approve their use where it is in creditors' best interests

Consistent with AICM's position on complexity and harmonisation in Section 8, this treatment should be achieved by amending the existing Corporations Act provisions rather than by creating additional standalone legislation, so that complexity is minimised for all stakeholders. Where genuinely complex trust structures are involved, such as a corporate trustee operating multiple trusts, court determination should remain available, but it should be the exception rather than the routine requirement it is today. AICM also notes that the personal insolvency regime should be amended in parallel to address insolvencies where the trustee is an individual.

AICM RECOMMENDS

> **10.2 The Corporations Act should be amended to expressly clarify the treatment of trusts with corporate trustees during insolvency, providing for external administration of the trust, a clear insolvency test, automatic practitioner powers over trust assets that prevail over the trust deed, a statutory priority replicating the corporate regime, and automatic limitation of ejection and indemnity clauses. Reform should amend existing legislation rather than create additional standalone legislation, and the personal insolvency regime should be amended in parallel where the trustee is an individual.**

10.5 Effect on credit behaviour and business dynamism

The two reforms are complementary and together address the full lifecycle of the credit relationship with a trust. The trust register improves transparency at the point of credit assessment and throughout the trading relationship; the insolvency clarification reduces cost and uncertainty when a trust fails. Both reduce the risk premium that credit professionals currently attach to trust structures.

For the Commission's purposes, this is a clear example of how a structural feature of the system creates a barrier to business dynamism. Small businesses that operate through trusts, for legitimate reasons, face restricted access to credit and higher costs simply because of the opacity and legal uncertainty attached to the structure. Removing that opacity and uncertainty would allow credit professionals to treat trusts on equal terms with other corporate structures, improving access to credit for a large segment of the small business sector and reducing the cost of insolvency when it occurs. Both outcomes directly serve the entry, growth and efficient exit of businesses that the Commission is examining.

11. Creditor engagement

11.1 Why creditor engagement matters

The insolvency system relies on creditors to function effectively. Creditors approve or reject restructuring plans, vote at meetings, challenge practitioner decisions, and provide the scrutiny that keeps the system honest. The Corporations Act gives creditors powers to challenge and approve the decisions of insolvency practitioners precisely because creditor oversight is intended to be a safeguard on the integrity of the process. When creditors disengage, that safeguard weakens, poor practices are less likely to be challenged, and confidence in the system as a whole declines.

Creditor engagement is also the thread that connects this section to the rest of the submission. Every reform theme AICM has raised depends in part on creditors being willing and able to participate: the ability to support a restructuring, to challenge an unfair preference demand, to scrutinise a plan, or to hold a practitioner to account. A system that discourages creditor engagement undermines its own objectives.

Yet creditor disengagement is widespread and, in AICM members' experience, growing. It is driven by two reinforcing factors: the complexity of the system and the poor returns it delivers. Addressing both is essential to restoring the creditor participation on which the system depends.

11.2 Complexity and cost deter engagement

To engage meaningfully with an insolvency, a creditor needs to understand the process and the legislation well enough to have confidence to query a practitioner, challenge a decision, or assert their rights. The complexity of the current system means that confidence can generally only be obtained with the benefit of legal advice, which is not commercially viable for most trade creditors. The practical result is that creditors who have valid concerns or valid rights do not pursue them, because the cost of understanding and asserting those rights exceeds the likely benefit.

This complexity is a direct product of the fragmented, dual-regime structure discussed in Section 8. Creditors dealing with a single economic exposure may need to engage with multiple processes, multiple practitioners, and two bodies of law, each with different time frames and requirements. The time required simply to understand which process applies and what rights it confers is itself a barrier to engagement.

The complexity also enables poor practice. AICM members regularly report creditors losing rights through the incorrect application of legislation, incorrect handling of secured property through poor understanding of the PPSA, and unfounded or scatter-gun preference demands. Where creditors cannot readily identify when their rights are being incorrectly handled, and cannot afford the advice needed to challenge it, poor practices persist unchecked and creditors' rights go unexercised. AICM members value the role of insolvency professionals and recognise that the vast majority act properly; the point is that complexity creates the conditions in which the minority of poor practices can go unchallenged.

These barriers are amplified for smaller businesses. A large creditor may have an experienced, in-house credit function able to navigate the process and absorb the cost of asserting its rights. A small business creditor rarely has that capability, and is therefore least able to participate, challenge poor practice, or protect its position, despite being least able to absorb the loss that follows. The complexity of the system falls hardest on the businesses the inquiry is most concerned to support.

11.3 Poor returns compound disengagement

The disincentive created by complexity is compounded by the reality of poor returns. ASIC insolvency statistics for 2024 to 2025 show that, in insolvencies where amounts were owed to unsecured creditors, 96.2% returned less than 11 cents in the dollar and 91.4% returned nothing at all. This position has remained essentially unchanged since 2018 to 2019, when the equivalent figures were 96.4% and 92.1%. When the likely return is minimal, the rational calculation for a creditor is that the time and cost of engaging with the process, let alone challenging it, cannot be justified.

AICM acknowledges the observation, made by others including during the PJC inquiry, that poor returns are often the product of company balance sheets that are deeply insolvent long before a practitioner is appointed. That is true, and modernisation of the insolvency regime will not, on its own, transform returns where there are no assets to distribute. But the point is not only about the size of the dividend. It is about clarity and certainty: a creditor who understands the process and can see that it is being conducted properly is able to manage their exposure, assert their rights where it matters, and have confidence in the outcome even where the return is low. Complexity removes that clarity and certainty, and in doing so removes the reason to engage at all.

This connects directly to the concern raised during consultation about liquidation costs consuming the returns that would otherwise reach creditors. Where the cost of the process itself absorbs the available funds, creditor disengagement deepens: creditors who see process costs consuming any prospect of return have little reason to participate. Reducing the cost and complexity of the process is therefore not only an efficiency measure; it is a precondition for restoring creditor engagement.

11.4 Practical measures to improve engagement

Alongside the structural reforms in Section 8, AICM identifies a number of practical measures that would materially improve creditor engagement in insolvency processes. These are low-cost, targeted changes drawn directly from members' experience of where the current system frustrates participation.

Meetings of creditors. AICM members strongly support the availability of creditor meetings, including low-cost virtual meetings, as an efficient way to improve engagement. Meetings allow a practitioner to communicate the information in their reports, allow creditors to ask questions and raise concerns, allow all creditors to hear the concerns of others, and allow creditors to make fully informed decisions before they are required to vote. Where meetings are restricted or discouraged, creditors are asked to make decisions on the basis of written information alone, which reduces both the quality of those decisions and creditor confidence in them. Meetings should be able to be held wherever the practitioner considers they would provide efficiencies, the circumstances warrant it, or creditors would benefit.

Access to creditor lists. AICM members report continuing difficulty obtaining lists of creditors from some practitioners. This information is important in every process and especially in a restructuring, where it facilitates creditor interaction and the efficient achievement of consensus. A creditor list should be provided promptly after appointment. This is also essential to the integrity of processes such as SBR, where an accurate understanding of the company's liabilities determines eligibility and the viability of any plan.

Information rights and response times. The current requirement for practitioners to respond to reasonable creditor requests within 20 business days is important, and AICM members are concerned to ensure that existing rights to request information are not eroded in any streamlined process. At the same time, members report that delays and resistance are still encountered in obtaining responses. In streamlined processes with short time frames, a 20-business-day response window may be too long to be useful, and consideration should be given to shorter response times proportionate to the process.

Reliable communication. AICM members report that notices are frequently sent to generic or unmonitored addresses, such as a remittance email address monitored by automated systems, or an address held on the PPSR that is not monitored by a person able to escalate an urgent notice. This means important notices, including restructuring plans with short response windows, are missed. AICM has long called for a registered email address to be collected and published alongside registered company office details, and for practitioners to be required to promptly address failed or ineffective deliveries so that creditors are not disadvantaged.

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> **11.1 Meetings of creditors, including low-cost virtual meetings, should be available wherever a practitioner considers they would provide efficiencies, the circumstances warrant their use, or creditors would benefit. Meetings should be held after information is provided and before creditors are required to vote.**

AICM RECOMMENDS

> **11.2 A list of creditors should be provided promptly after the appointment of a practitioner, and no later than five business days after appointment in a restructuring, to facilitate creditor interaction and support the integrity and viability of the process.**

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> **11.3 Existing creditor rights to request information should be preserved, with practitioners held to timely responses. In streamlined processes with short time frames, consideration should be given to response times shorter than the current 20 business days, proportionate to the process.**

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> **11.4 A registered email address should be collected and published alongside registered company office details, and practitioners should be required to promptly address failed or ineffective deliveries, so that creditors reliably receive notices including those with short response windows.**

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> **11.5 The complexity and cost that drive creditor disengagement should be addressed through the holistic review, harmonisation and single regulator reforms set out in Section 8. A system that creditors can understand and navigate without prohibitive legal cost is the foundation for meaningful creditor engagement.**

11.5 Effect on business dynamism

Creditor engagement is not an end in itself. It is the mechanism through which the insolvency system delivers scrutiny, integrity and confidence. A system in which creditors participate is a system in which poor practices are challenged, viable restructurings are supported, and outcomes are trusted. A system from which creditors have disengaged is one in which the safeguards exist on paper but not in practice.

For the Commission's purposes, improving creditor engagement improves the efficiency and integrity of business exit and renewal. It supports viable businesses by ensuring creditors are willing and able to back genuine restructurings, including the smaller creditors for whom the current complexity is most disabling. It protects the returns that fund future credit by ensuring the process is scrutinised and its costs contained. And it reinforces the confidence that credit professionals need to extend trade credit in the first place, knowing that if a customer fails, the process that follows will be one they can understand, participate in, and trust. Restoring creditor engagement is, ultimately, about restoring confidence in the system that underpins the extension of credit across the economy.

12. Consolidated recommendations

The following consolidates the 32 recommendations made throughout this submission, grouped by theme. Each recommendation retains the numbering used in the relevant section, so that 4.1 refers to the first recommendation in Section 4, and so on. The recommendations are directed at a common objective: aligning the incentives in the insolvency framework with the credit behaviour that supports business entry, growth and efficient exit.

Unfair preference claims (Section 4)

> **4.1 Payments received by unrelated creditors in the ordinary course of business should be exempt from unfair preference claims. Where an unrelated creditor has not used unlawful pressure, intimidation or a position of undue influence to obtain payment, there should be no basis for a preference claim, regardless of the timing of the payment relative to insolvency.**
>
> **4.2 As an interim step, the limitations currently applicable under the simplified liquidation process, which restrict preference claims against unrelated creditors to payments above $30,000 made within three months of liquidation, should be extended to all insolvency proceedings, not only simplified liquidations.**
>
> **4.3 The period within which a liquidator may bring a preference claim against an unrelated creditor should be reduced from three years to 12 months from the commencement of liquidation. Court extensions should only be available in cases of genuine complexity or where there is clear evidence of misconduct.**
>
> **4.4 The indicia of a preference claim against an unrelated creditor should require actual knowledge of insolvency, not suspicion or constructive knowledge. A creditor who suspects, or ought to have suspected, insolvency, but had no confirmed knowledge, should not be exposed to a preference claim for payments received in the ordinary course of business.**
>
> **4.5 The burden of proof in preference claim proceedings against unrelated creditors should be explicitly stated to rest on the liquidator, including the obligation to substantiate the claim from first demand. Liquidators should be required to review records, validate the basis for a**

claim, and engage in open and honest discussions with creditors before issuing demands.

Insolvent trading and safe harbour (Section 5)

5.1 The insolvent trading prohibition should be actively and consistently enforced. AICM supports the establishment of a dedicated insolvency regulator with a clear mandate to investigate and pursue insolvent trading, including the authority to take action against directors whose companies generate minimal returns to unsecured creditors. Enforcement should be a genuine deterrent, not a theoretical liability.

5.2 Creditors' interests should be explicitly included in the 'better outcome' analysis that underpins the safe harbour defence. A safe harbour that improves outcomes for directors at the expense of creditors, by extending trading that deepens creditor losses before an inevitable liquidation, is not achieving its policy objectives. The better outcome test should require consideration of creditor outcomes, not only the prospects for the company.

5.3 Creditors who continue to supply a business during a safe harbour period should be protected from unfair preference claims for payments received during that period.

5.4 Data collection on safe harbour engagements should be mandated through existing liquidator and voluntary administrator reporting obligations. Without reliable data on uptake, outcomes, and the profile of businesses accessing the safe harbour, it is not possible to assess whether the regime is working or to identify where further reform is needed. The 2021 Safe Harbour Review recommended this; it has not been implemented.

ATO tax-debt transparency (Section 6)

6.1 The threshold for disclosure of business tax debts to credit reporting bureaus should be reduced from $100,000. Alternatively, a mechanism should be established for regular review of the threshold amount to ensure it remains fit for purpose over time. At $100,000, the threshold excludes the majority of businesses that carry material tax risk and provides no meaningful transparency for credit decisions involving smaller businesses.

6.2 Business tax debt information disclosed to credit reporting bureaus should remain on the credit file for five years from the date of disclosure. During this period, the record should be updated to reflect payments and arrangements in the same manner as any other commercial default. The record should be removed only if reported in error.

6.3 The ATO should act as a model creditor, using its disclosure and enforcement powers transparently and consistently. Where the ATO exercises discretion not to enforce, it should do so in a way that considers impacts on trade creditors who do not have a fully informed understanding of the business's viability.

Small Business Restructuring (Section 7)

7.1 Creditors who continue to supply a business on credit terms during an SBR should be protected. Credit extended during the restructuring period should be given priority, or payments to unrelated creditors prior and during the period should be explicitly exempt from being deemed voidable preferences in a subsequent liquidation. This protection will help credit professionals to justify continued supply on SBR commencement, maximising effective restructuring and long term viability.

7.2 The definition of 'admissible debt' should be legislatively clarified to remove the current uncertainty over whether it is determined by date of supply or due date of invoice. This ambiguity causes suppliers to place accounts on stop unnecessarily and should be resolved.

7.3 Debt values should be verified as early as possible in the SBR process, before a plan is put to creditors. This should be achieved by requiring a schedule of debts with the directors' declaration, lodged with ASIC and provided to creditors, and by allowing creditors to submit a proof of debt before a plan is proposed.

7.4 Plan approval should be aligned with the voluntary administration process, requiring a majority in both number and value rather than value alone. This ensures smaller trade creditors retain an effective voice and are not overridden by a single dominant creditor.

7.5 Restructuring practitioners should be fully registered liquidators. Where a restricted registration is permitted, it should be clearly disclosed on all communications so that creditors understand the capacity in which the practitioner is acting and can have appropriate confidence in the integrity of the process.

7.6 Where a plan is terminated, creditors should vote on the next step, whether continued trading, voluntary administration, or liquidation, rather than the business defaulting to simplified liquidation or continuing to trade without oversight. This prevents the creation of debt-laden 'zombie companies' and ensures liquidation is a considered outcome rather than an automatic one.

Harmonisation and a single regulator (Section 8)

8.1 A holistic review, modernisation and alignment of the corporate and personal insolvency regimes should be undertaken, with the objective of a single, coherent insolvency framework that is clear for all stakeholders to understand and engage with. This review should address both regimes in the same process, recognising that they operate as a single system for many businesses, particularly SMEs.

8.2 A single insolvency regulator should be established with responsibility for both corporate and personal insolvency. Consolidating regulatory responsibility would remove duplication, improve regulatory engagement and enforcement, reduce cost to the community, and provide a single, coherent point of oversight for the insolvency system. Where a single regulator is established, consideration should be given to

consolidating related functions, such as the Personal Property Securities Register, within it.

8.3 Pending broader reform, immediate steps should be taken to reduce fragmentation, including co-locating policy responsibility for corporate and personal insolvency within a single Commonwealth department and aligning the processes, time frames and requirements of the two regimes wherever possible. These measures would deliver benefits in the near term without waiting for the full reform to be designed and implemented.

Illegal phoenixing (Section 9)

9.1 The existing laws that address phoenix conduct should be actively and consistently enforced, with meaningful penalties. AICM does not consider that new offences are the priority; the priority is enforcement of the substantial body of existing law, supported by a dedicated insolvency regulator with the mandate and resources to investigate and pursue phoenix activity.

9.2 The value of the Director Identification Number regime should be realised by making director history usable for credit risk assessment. Credit professionals should be able to identify a director's prior involvement in failed companies, including companies wound up leaving creditors or the ATO unpaid, so that the warning signs of phoenix conduct are visible before credit is extended.

9.3 Pre-insolvency advisers who facilitate illegal phoenix activity should be brought within an appropriate regulatory framework and subject to meaningful consequences and/or prosecuted under existing frameworks such as providing unlicenced or illegal tax and financial advice. Addressing the advisers who enable phoenixing is essential to any effective deterrent.

9.4 A hard-line enforcement approach should be taken to directors, advisers and promoters who display behaviours designed to deny creditors access to assets. Clear conduct parameters and consistent enforcement would both deter the conduct and provide certainty for the honest majority.

Trusts with corporate trustees (Section 10)

10.1 A national register of trading trusts should be established, recording at a minimum the trustee, beneficiaries and current trust deed, with accompanying legislation that gives legal effect to the trust on registration. The register should draw on the model of the Personal Property Securities Register and link to existing ABN and company registers.

10.2 The Corporations Act should be amended to expressly clarify the treatment of trusts with corporate trustees during insolvency, providing for external administration of the trust, a clear insolvency test, automatic practitioner powers over trust assets that prevail over the trust deed, a statutory priority replicating the corporate regime, and automatic limitation of ejection and indemnity clauses. Reform should amend existing legislation rather than create additional standalone legislation,

and the personal insolvency regime should be amended in parallel where the trustee is an individual.

Creditor engagement (Section 11)

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