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Productivity Commission
4 National Circuit
BARTON ACT 2600

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Dear Commissioners,

Productivity Commission – Reducing barriers to business dynamism in Australia

Thank you for the opportunity to contribute to the Productivity Commission's inquiry into "*Reducing barriers to business dynamism*". This submission will focus on the issues in the inquiry relating to Australia's corporate and personal insolvency frameworks.[1]

1. *Introduction*

Australia's corporate and personal insolvency laws constitute critical legislative and economic infrastructure. They are not merely mechanisms for resolving financial distress or administering business failure; they are fundamental to the efficient operation of a dynamic market economy. Well-designed insolvency frameworks facilitate economic renewal by preserving viable businesses, enabling the orderly exit of those that are no longer viable, and supporting the efficient reallocation of labour, capital and other productive resources to higher value uses. In doing so, they underpin innovation, entrepreneurship, competition, and long-term productivity growth.

The fundamental objective of a modern insolvency regime is to balance two complementary goals. First, it should maximise opportunities for the rescue and restructuring of economically viable businesses. Secondly, it should facilitate the timely and orderly exit of businesses that are no longer viable, allowing capital, labour, knowledge, and entrepreneurial effort to be redeployed

[1] The author acknowledges the use of generative artificial intelligence (OpenAI's ChatGPT) to assist with the synthesis of research materials, development of structure and refinement of drafting during the preparation of this submission. All substantive analysis, opinions, conclusions, and editorial decisions are the author's own.

where they can generate greater economic value. A well-functioning insolvency system should therefore:

- preserve and restructure viable businesses wherever possible;
- facilitate the efficient closure of non-viable businesses;
- enable the timely reallocation of labour, capital, assets, and knowledge to more productive uses;
- protect the legitimate interests of creditors, employees, consumers, and the broader community; and
- promote confidence in business activity, entrepreneurship, commercial lending, and investment.

Viewed through a broader economic lens, insolvency law is properly understood as providing a productivity framework rather than simply a debt recovery or business failure regime. It is an essential component of Australia's economic architecture, supporting business dynamism by encouraging innovation, responsible risk-taking and the efficient allocation of scarce resources.[2]

Australia's insolvency framework is fundamentally sound and is generally well regarded internationally. However, successive waves of incremental reform over more than two decades have produced a legislative framework that has become increasingly complex, fragmented, and procedurally burdensome. While the underlying policy settings remain largely appropriate, the legislation itself has become more difficult to navigate, more costly to administer and less accessible for the businesses and stakeholders who rely upon it. Importantly, Australia is not starting from a blank page in this context. Successive reviews over the past decade have examined Australia's corporate and personal insolvency frameworks in considerable detail, culminating most recently in the Parliamentary Joint Committee on Corporations and Financial Services (**PJC**) 2023 report on “Corporate insolvency in Australia” (**Report**). The result is a mature body of policy analysis and reform recommendations. The challenge is no longer to identify what should be reformed, but to implement and refine those reforms in a coherent and coordinated manner.

2. *Key themes*

This submission identifies five interrelated themes concerning the design, operation, and integrity of Australia's corporate and personal insolvency frameworks. Together, these themes

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[2] The role of insolvency law in the economy was recently discussed by Professor Aurelio Gurrea Martinez, Professor of Law at Singapore Management University in his article “Insolvency Law as a Catalyst for Growth”, published in the Oxford Business Law Blog, 23 June 2025 and available at https://blogs.law.ox.ac.uk/oblb/blog-post/2025/06/insolvency-law-catalyst-growth

illustrate how targeted reform can strengthen Australia's productivity, support business dynamism, and improve the efficiency of the insolvency system:

I. **Insolvency law is productivity infrastructure**, not merely a mechanism for resolving financial distress.
II. **Australia's insolvency framework is fundamentally sound**, but has become complex, fragmented, and difficult to navigate.
III. **The priority should now be implementation**, drawing on the substantial body of existing reviews and recommendations.
IV. **Future reform should be guided by a set of principles**, including coherence, accessibility, efficiency, durability, and adaptability.
V. **Targeted reform priorities should focus on practical productivity gains**, including earlier restructuring, SME accessibility, legislative simplification, and efficient regulation.

3. *Why does insolvency law matter to productivity?*

Effective insolvency frameworks are fundamental to a productive and dynamic economy. A well-designed and efficiently functioning insolvency regime provides the institutional framework through which financially distressed businesses can either be restructured and returned to viability or, where that is not possible, exited efficiently so that labour, capital, knowledge, and entrepreneurial effort may be redeployed to more productive uses. As the OECD has observed, a "well-functioning exit margin" is vital to aggregate productivity because it strengthens market selection and enables the efficient reallocation of scarce resources from failing firms to more productive enterprises.[3]

This reflects Schumpeter's principle of "*creative destruction*", which has been adopted by the OECD as a central framework for understanding productivity growth.[4] Economic progress depends not only upon encouraging the formation and growth of new businesses, but also upon ensuring that businesses which are no longer economically viable do not continue to absorb capital, labour and other scarce resources that could generate greater value elsewhere. Efficient insolvency regimes therefore perform a critical economic sorting function: they preserve businesses capable of rehabilitation while facilitating the timely exit of those that are not.[5]

The economic consequences of ineffective insolvency frameworks are illustrated by the increase in "zombie" firms. While the phenomenon pre-dated the COVID-19 pandemic, it was

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[3] OECD Economic Department Working Papers No. 1309, 26 July 2016, "Insolvency Regimes and Productivity Growth: A Framework for Analysis" by Müge Adalet McGowan and Dan Andrews at page 7. Available at https://www.oecd.org/en/publications/insolvency-regimes-and-productivity-growth_5jlv2jqhxgq6-en.html

[4] The OECD has integrated "neo-Schumpeterian growth theory" into much of its research, for example, see "Inefficient insolvency regimes: a barrier to creative destruction?", 4 October 2016, by Müge Adalet McGowan and Dan Andrews. Available at https://oecdecoscope.blog/2016/10/04/inefficient-insolvency-regimes-a-barrier-to-creative-destruction/

[5] Menezes, A and Gropper, A *The Economic Impacts of Insolvency Regimes: Evidence Challenges and Opportunities* World Bank Group Property Insight Series, February 2026

exacerbated by extraordinary fiscal support measures and the temporary suspension of creditor enforcement activity, allowing some non-viable businesses to continue operating for extended periods.[6] Rather than contributing to economic growth, zombie firms tie up scarce credit and productive resources, weaken competitive pressures and impede investment by stronger businesses. As the Asian Development Bank (**ADB**) has observed, insolvency reform should be viewed as part of the "productivity policy toolkit", because effective insolvency frameworks improve the allocation of capital, facilitate economic renewal and support stronger long-term productivity growth.[7]

Accordingly, insolvency reform should be viewed as an economic issue as much as a legal one. A framework that enables viable businesses to be restructured, non-viable businesses to exit promptly and productive resources to be redeployed efficiently makes an important contribution to Australia's long-term productivity. Recognising insolvency law as an important contributor to productivity also changes the focus for law reform. The question is no longer whether Australia's insolvency framework requires fundamental redesign, but whether it is operating as efficiently, effectively, and cohesively as it can.

4. *What is the current state of Australia's insolvency framework?*

Australia's corporate and personal insolvency frameworks are, in many respects, fundamentally sound. The legislative regimes are based on well-established principles and supported by an experienced judiciary, a well-developed insolvency profession, respected regulators and a mature body of legislation and case law. The principal challenges no longer lie in underlying policy setting but in the operation, accessibility, and legislative architecture through which policies are delivered.

Australia's insolvency framework continues to compare favourably with those of other developed economies and is generally recognised internationally as a mature, stable and effective insolvency regime, notwithstanding opportunities for further refinement and modernisation.[8] The statistical snapshot contained in Chapter 2 of the PJC Report[9] demonstrates that, although formal insolvency appointments impact only a small proportion of

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[6] For example, there was a significant decline in insolvency appointments during 2020 and 2021 reflecting the combined effect of COVID-19 support measures, including JobKeeper, enhanced income support, temporary insolvency law reforms, loan repayment deferrals, and the Australian Taxation Office's suspension of most debt collection and enforcement activity.

[7] Kumar, A and Nilsson Hakkala, K "Clearing the Zombies: How insolvency reform can lift productivity in Asia and the Pacific" Asian Development Bank Blog, published 3 June 2026. Available at https://blogs.adb.org/blog/clearing-zombies-how-insolvency-reform-can-lift-productivity-asia-and-pacific This article and other issues in relation to the intersection of insolvency law and productivity have also been discussed by Michael Murray in his article "Australian Productivity" published 15 June 2026, available at https://murrayslegal.com.au/blog/2026/06/15/18607/ and a Linked In post https://www.linkedin.com/posts/michaelmurray7_clearing-the-zombies-how-insolvency-reform-activity-7468255927083790336-_pda/?utm_source=share&utm_medium=member_desktop&rcm=ACoAAAPhglUBreD3Jb8ZykiODswfdkBNaHe9lKA

[8] See for example, PJC Report (Chapter 2) and, historically, the World Bank *Doing Business* "Resolving Insolvency" indicator which was part of its "Ease of Doing Business Index" that was discontinued in 2021.

[9] See PJC Report at page 13.

Australian businesses, the framework plays an important economic function in preserving value, protecting creditors and facilitating the orderly resolution of financial distress.

The principal challenge facing Australia's insolvency framework is therefore not one of fundamental policy, but of legislative quality and operational efficiency. Over the past two decades, successive reform packages have sought to address discrete policy issues, including the introduction of important developments like the safe harbour reforms, as well as the Insolvency Practice Schedule (**IPS**) and Insolvency Practice Rules (**IPR**),[10] combatting illegal phoenixing measures,[11] small business restructuring process[12] and other amendments to reporting, remuneration and creditor engagement requirements. Individually, most of these reform measures have been worthwhile and have addressed legitimate policy concerns.

Collectively, however, these successive reforms have produced a legislative framework that has become increasingly complex, fragmented, and procedurally burdensome. The resulting complexity of Australia's insolvency framework is not the result of any single measure, rather it is the cumulative consequence of these reforms, each directed towards addressing a discrete policy objective, but often developed without sufficient regard to their interaction with the legislative framework as a whole.

Legislative complexity carries real economic costs by increasing compliance burdens, reducing navigability, and diverting resources away from productive activity.[13] Increasingly intricate legislative drafting, multiple sources of regulation and expanding compliance obligations increase the time and cost required to administer insolvency processes, diverting resources away from restructuring activity and creditor returns. The framework has become more difficult for directors, creditors, practitioners, and advisers to navigate, resulting in greater uncertainty, higher transaction costs, and additional administrative burden. Those costs are particularly acute in smaller administrations where available assets are limited.

Future insolvency reform should therefore focus less on developing new policy and more on improving the legislative framework through which existing policy objectives are delivered. Simplifying the legislative architecture is not an exercise in deregulation for its own sake. Instead, it is an opportunity to reduce unnecessary costs, improve accessibility, encourage

[10] The IPS and IPR were introduced as part of the *Insolvency Law Reform Act 2016*.

[11] Introduction of creditor defeating dispositions, section 588FDB by the *Treasury Laws Amendment (Combatting Illegal Phoenixing) Act 2020 (*Cth)

[12] The small business restructuring (**SBR**) regime was introduced by the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* (Cth) which introduced the new Part 5.3B into the Corporations Act.

[13] See Australian Law Reform Commission (**ALRC**), *Confronting Complexity: Reforming Corporations and Financial Services Legislation*, Report No 141 (2023), which identifies complexity in corporations and financial services legislation as increasing compliance costs, reducing navigability and undermining the effective operation of the regulatory framework. See also Law Council of Australia, Business Law Section, *Response to Part 2 of Interim Report 1: Regulating to Promote Business Dynamism* (17 September 2025), observing that poor-quality regulation adversely affects productivity and business dynamism, and that good regulation requires rules whose societal benefits outweigh the costs of compliance and enforcement.

earlier engagement with restructuring processes, and enable the insolvency system to operate more efficiently for the benefit of businesses, creditors, and the broader economy.

5. *What should the Government's focus now be?*

Australia has reached a point in the evolution of its insolvency laws where the emphasis of reform should change. Noting the successive targeted reforms implemented over the past two decades, the current priority should not be to continue adding new layers of legislation, but to ensure that the existing legislative framework delivers policy objectives as simply, coherently and efficiently as possible.

The Business Law Section of the Law Council of Australia recently observed, in its submission to the Productivity Commission's Five Pillars inquiry,[14] that the challenge is often not the policy objective itself, but the quality of the regulation through which that objective is implemented. This observation also applies in the context of insolvency law reform.

One of the recurring features of recent insolvency law reform has been the understandable tendency to respond to emerging issues by adding new provisions, new processes, or additional compliance obligations. Comparatively less attention has been given to simplifying, consolidating, or removing provisions that have become unnecessarily complex, duplicative, or obsolete. The cumulative effect has been a legislative framework that has grown in both volume and complexity without a corresponding improvement in its overall coherence or usability.

This is not a criticism of individual reform measures. Most have addressed legitimate policy concerns and many have improved the overall operation of the insolvency system. However, viewed collectively, they demonstrate the importance of assessing not only the merits of individual reforms, but also their cumulative impact on the legislative framework as a whole.

Australia's insolvency laws form part of the legislative and economic infrastructure that underpins Australia's productivity and long-term economic growth. Going forward insolvency reform should focus on the careful maintenance and continual improvement of this important national infrastructure rather than continued legislative accumulation. The result of successive reforms has been a gradual accumulation of complexity, procedural duplication[15] and increasing compliance obligations[16] that impose unnecessary costs on practitioners, businesses, creditors,

[14] Ibid. Law Council of Australia submission.
[15] For example, the navigation through IPS and IPR provisions can be confusing and clunky, due in large part to the numbering system adopted and the similarities of numbering between the two sources. Another example often raised by insolvency practitioners is the remuneration reporting requirements which are time consuming and cumbersome.
[16] Examples of increasing compliance obligations include the extension of anti-money laundering and counter-terrorism financing (AML/CTF) obligations to insolvency practitioners and the application of Australia's new merger control regime to insolvency transactions. While these reforms pursue important public policy objectives, they also illustrate the cumulative compliance burden that may arise where broader regulatory reforms intersect with the insolvency framework.

regulators, and the courts. Future reform should therefore focus on simplifying the legislative architecture, improving navigability, and ensuring that the framework continues to operate as a coherent, accessible, and efficient system.

This is not a call for deregulation, nor does it suggest that the policy objectives underpinning Australia's insolvency framework require fundamental reconsideration. Rather, it recognises that legislative quality is an important driver of productivity. A legislative framework that is coherent, accessible, and internally consistent increases confidence, improves compliance and reduces transaction costs, allowing the insolvency system to achieve its intended outcomes more effectively.

Australia's insolvency policy foundations are fundamentally sound. The opportunity now lies in improving the legislative framework through which those policies are delivered, simplifying the legislative architecture and implementing reforms that enable the system to perform at its full potential. The next phase of reform should therefore be guided by a clear and consistent set of principles directed towards maintaining and improving Australia's legislative infrastructure.

6. *What principles should guide future insolvency law reform?*

The continued evolution of Australia's insolvency laws has therefore reached the point where future reform is likely to be more effective if guided by a coherent set of legislative principles. The PJC Report recognised key objectives for Australia's insolvency framework.[17] Those objectives also reveal a number of broader themes concerning the qualities of an effective insolvency framework. These themes provide a useful set of principles against which future reforms may be assessed.

While individual reforms should continue to respond to emerging policy issues, they should also contribute to improving the legislative framework as a whole. Four overarching principles against which legislative reforms may be considered are suggested below. These principles are not intended to prescribe particular policy outcomes. Rather, they are drawn from common themes which have emerged from recent insolvency law reform reviews and inquiries and are offered as a framework through which future reform proposals might be assessed to ensure that, individually and collectively, they contribute to the continued improvement of Australia's insolvency framework.

a) **Coherence – *Does the insolvency framework fit together?***

The insolvency framework should operate as an integrated legislative system rather than a collection of discrete reform measures. Successive reforms should be assessed not only by whether they achieve their immediate policy objectives, but also by whether they improve the coherence of the legislative framework as a whole. New provisions should

[17] See discussion in Chapters 3 and 4 of the PJC Report and Recommendations 1 and 2.

integrate with existing legislation, minimise duplication and avoid unnecessary fragmentation across multiple legislative instruments.

For example, rather than introducing new statutory pathways or duplicating existing concepts, future reforms should first consider whether existing provisions can be adapted, consolidated, or simplified to achieve the desired policy outcome. Every reform should improve not only the immediate policy outcome but also the quality of the overall legislative framework.

b) **Accessibility** – ***Can stakeholders understand, navigate, and apply it?***

The legislative framework should be capable of being understood and applied by those who use it. Accessibility extends beyond plain drafting. It includes logical legislative structure, consistent terminology, navigability, and proportional procedural requirements. A framework that practitioners, directors, creditors, and courts can readily understand will reduce unnecessary costs, improve compliance, and encourage earlier engagement with restructuring processes.[18]

For example, legislative provisions dealing with a single insolvency process should, wherever possible, be logically organised and expressed consistently, reducing the need for users to navigate multiple legislative instruments or reconcile overlapping procedural requirements.

c) **Efficiency** – ***Does the insolvency framework deliver its intended outcomes with minimal complexity?***

The legislative framework should enable insolvency processes to be administered efficiently, with legislative requirements and procedural obligations that are proportionate to the objectives they are intended to achieve. Additional procedural steps or compliance obligations should produce a demonstrable public benefit. Unnecessary procedural duplication, complexity and administrative burden divert resources away from restructuring activity, increase transaction costs and reduce returns to stakeholders.

For example, before introducing additional reporting or procedural requirements, consideration should be given to whether equivalent information is already available through existing processes or whether the objective can be achieved through a simpler legislative mechanism.

[18] Also relevant to this principle is the importance of adopting measures to develop widespread education in financial literacy and business structures as another mechanism and measure for improving accessibility.

d) **Durability & Adaptability** – ***Will the insolvency framework remain fit for purpose as commercial practice and economic realities evolve?***

Australia's insolvency framework should be sufficiently durable that its underlying policy settings remain effective over time, while sufficiently adaptable to respond to changing commercial practices, technological developments, and emerging policy issues. Future reforms should enable the framework to evolve without unnecessary legislative accumulation or diminishing its coherence, accessibility, and efficiency.

For example, reforms should be designed with their long-term interaction with the existing legislative framework in mind, including consideration of whether corresponding provisions can be modernised, consolidated, or repealed, rather than simply adding further legislative layers.

Applied in practice, these principles would require reforms to improve not only the policy outcome it seeks to achieve, but also the legislative framework through which that outcome is delivered. In this way, successive reforms would contribute to the ongoing maintenance and improvement of Australia's legislative and economic infrastructure, rather than simply adding another layer to it.

7. *Where will reform have the greatest impact – what should be the priorities for implementation of insolvency law reform?*

This submission does not intend to advocate a new program of insolvency law reform. Rather, it aims to identify those areas where implementation of existing reform proposals is likely to deliver the greatest productivity dividend. Many of the priorities outlined below have been identified through previous reviews, including the PJC Report, and now warrant focused implementation. These priorities have been selected because they have the potential to deliver meaningful productivity gains while also advancing the broader objectives discussed in this submission. They are directed towards strengthening Australia's restructuring framework, improving accessibility, reducing unnecessary complexity, promoting earlier intervention, and enhancing the long-term operation of Australia's insolvency system.

Taken together, these priorities reflect a balanced approach to reform. Some are directed towards improving the legislative framework itself, while others focus on strengthening the practical operation of Australia's restructuring system and encouraging earlier engagement with financial distress.

a) **Strengthening Australia's rescue culture – *refining the safe harbour regime***

The introduction of the safe harbour regime[19] was a transformative reform to Australia's insolvency framework. By encouraging directors to pursue genuine restructuring opportunities rather than prematurely appointing an external administrator, safe harbour has helped develop a more mature restructuring culture.

While the safe harbour framework has been a worthwhile reform, it was the subject of a statutory review which was released in March 2022. The *Review of the Insolvent Trading Safe Harbour Report* (**Safe Harbour Review**) [20] identified opportunities to improve its practical operation, including targeted legislative clarification, greater guidance for directors and advisers, and increased awareness of the regime—particularly amongst SMEs, where knowledge and utilisation remain comparatively low. Implementing the recommendations of the Safe Harbour Review and the PJC Report[21] would improve confidence in the regime and encourage earlier engagement with restructuring options before financial distress becomes irreversible.

Strengthening the operation and accessibility of the safe harbour regime has the potential to deliver significant productivity benefits by encouraging earlier intervention, preserving viable businesses, protecting employment, and reducing unnecessary value destruction.

b) **Making restructuring available for SMEs – *addressing the Small Business Restructuring regime***

The introduction of the Small Business Restructuring (**SBR**) was also an important and worthwhile reform for Australia's insolvency regime. The SBR framework has demonstrated considerable promise but remains under-utilised.[22] The PJC Report and ASIC have both identified practical barriers which limit access to SBRs.[23] The existing eligibility thresholds, procedural requirements and practical barriers limit its accessibility for many businesses that could benefit from early restructuring.

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[19] The safe harbour reforms were introduced by the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), which inserted s 588GA into the Corporations Act. The reforms formed part of the Turnbull Government's National Innovation and Science Agenda (**NISA**) and built upon recommendations of the Productivity Commission, *Business Set-up, Transfer and Closure* (Report No 75, 2015), together with the Commonwealth Treasury consultation paper, *Improving Bankruptcy and Insolvency Laws* (2016).
[20] Treasury Report into "Review of insolvent trading Safe harbour" led by Genevieve Sexton, Leanne Chesser and Stephen Parbery between August and November 2021. The report was released in March 2022 and is available at: https://treasury.gov.au/publication/p2022-p258663-final-report
[21] See Safe Harbour Review at Part VI Recommendations (from page 87) and the PJC Report Recommendation 7 (at page xiv and discussion at Chapter 7).
[22] See ASIC Report 756 *Review of small business restructuring process* January 2023, and ASIC Report 810 *Review of small business restructuring process: 2022-24*.
[23] Ibid and see PJC Report discussion in Chapter 7.

Improving accessibility to, and the operation of the SBR regime has the potential to generate productivity benefits extending beyond the businesses directly using the process. Earlier and more accessible restructuring improves business survival, protects employment, and preserves productive economic activity.

c) **Completing Australia's restructuring toolkit – *implementation of rescue financing and cross-class cram down***

Australia has already undertaken substantial reform over the past decade to encourage restructuring. The next logical stage is therefore to complete the restructuring framework by introducing additional mechanisms which are recognised as necessary to facilitate complex restructurings of viable businesses. However, important gaps remain compared with overseas restructuring regimes.[24] Improved access to rescue finance and binding cram down mechanisms would increase the likelihood of successful restructurings in appropriate cases.

Rescue financing: A well-designed rescue financing regime can provide financially distressed but viable businesses with access to the liquidity needed to continue trading while a restructuring is implemented, preserving enterprise value, employment and creditor returns that may otherwise be lost through premature insolvency. [25]

Cross-class cram down: A cross-class cram down mechanism enables the Court, subject to appropriate safeguards, to approve a restructuring notwithstanding the opposition of a dissenting creditor class where the restructuring is fair and delivers a better outcome than the relevant alternative, reducing the ability of minority stakeholders to prevent value-preserving restructurings.[26]

Together, the introduction of these mechanisms would largely complete Australia's restructuring "toolkit" and strengthen capacity to preserve viable businesses, increase interest in Australia's system from foreign jurisdictions,[27] and support long term productivity.

d) **Simplifying regulatory and institutional oversight – *streamlining regulation***

Australia's personal and corporate insolvency systems perform closely related functions but continue to operate within separate legislative and regulatory frameworks. While the

[24] See Turnaround Management Association Australia, (**TMA**) *Submission to Treasury: Improving Schemes of Arrangement* (September 2021), (**Improving Schemes Submission**) which argues that Australia's restructuring framework remains incomplete in comparison with leading international jurisdictions and recommends the introduction of complementary restructuring tools, including cross-class cram down and rescue financing mechanisms, to facilitate the restructuring of viable but financially distressed businesses.
[25] See Improving Schemes Submission at sections 8.1(b) and 8.4.
[26] See Improving Schemes Submission at section 7.
[27] See Improving Schemes Submission at section 5.

distinction reflects historical and constitutional considerations, it also creates duplication in regulatory oversight, policy development, practitioner regulation, and stakeholder engagement.

While the current arrangements have served the insolvency system well there is merit in reviewing whether the current regulatory and institutional settings remain appropriate. Previous reviews have identified opportunities for greater coordination and harmonisation across Australia's insolvency institutions.[28]

Rather than focusing on the question of institutional structure alone, future reform should consider whether existing regulatory arrangements remain the most efficient means of administering Australia's increasingly integrated insolvency framework. Greater coordination between regulators, increased harmonisation of regulatory approaches and, where appropriate, consolidation of administrative functions have the potential to reduce duplication, improve consistency, and simplify engagement for practitioners, businesses, and creditors.

From a productivity perspective, reducing unnecessary institutional complexity is as important as simplifying legislation itself. A more integrated regulatory framework would reduce compliance costs, improve the consistency of regulatory guidance, and support a more coherent insolvency system while preserving the distinct expertise required in both personal and corporate insolvency.

e) **Improving financial literacy and early intervention – *education of stakeholders***

A truly effective insolvency system begins by looking to events that occur well before an insolvency appointment. Legislative reform alone cannot improve restructuring outcomes if directors and business owners fail to recognise financial distress or seek advice early enough. As previous reviews and industry commentary have recognised, improving financial literacy and awareness of Australia's restructuring framework is an important complement to legislative reform. [29]

Greater investment in director education, financial literacy, trusted advisory pathways, understanding of existing options for restructuring (including the operation of the safe harbour regime), and the importance of early intervention are initiatives that have the potential to encourage early engagement and improved outcomes.

Improving financial capability and encouraging earlier intervention is likely to deliver productivity benefits well beyond the insolvency system itself. Earlier recognition of

[28] See PJC Report at Chapter 10.
[29] See Harris, J “Insolvency isn’t the disease, it’s the symptom” Australian Insolvency Law blog, 1 July 2026, and Safe Harbour Review report at section 3.2, 6.1 and 6.2.

financial distress supports more successful restructurings, reduces avoidable business failures, and preserves productive businesses, employment, and economic value. In that respect, education should be viewed not simply as a governance initiative, but as a key component of Australia's broader productivity framework.

These priorities are not intended to be exhaustive, nor do they require a wholesale redesign of Australia's insolvency framework. Rather, they represent practical implementation opportunities that build upon previous reviews and have the potential to deliver meaningful productivity gains through a more accessible, coherent, and effective insolvency system.

8. *Conclusion*

Australia's insolvency laws are an important part of the nation's legislative and economic infrastructure. They support entrepreneurship, facilitate business restructuring, enable the orderly redeployment of capital and labour, and promote confidence in Australia's commercial and financial markets. Insolvency law should therefore be viewed not merely as a mechanism for responding to business failure, but as an important contributor to Australia's long-term productivity and economic resilience. Australia's insolvency policy foundations are fundamentally sound. The opportunity now lies in improving the legislative framework through which those policies are delivered. A legislative framework that is coherent, accessible, efficient, and adaptable reduces transaction costs, promotes confidence, supports earlier intervention during financial distress, and enables the insolvency system to operate more effectively.

Like any critical national infrastructure, Australia's insolvency framework requires ongoing maintenance if it is to continue supporting productivity, innovation, and economic growth. The challenge is no longer to determine what Australia's insolvency framework should be, but to ensure that every reform strengthens the legislative framework through which Australia's insolvency policy is delivered.

I look forward to following the developments of this important inquiry and am available to provide any further information which the Commissioners may require.

Yours faithfully,

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DIRECTOR & PRINCIPAL LAWYER

About NLM Legal

NLM Legal is a specialist legal consulting practice established by Natasha McHattan, providing strategic legal advice, consulting, education, and policy support in the areas of insolvency, restructuring, turnaround, and corporate law.

Natasha is a Sydney-based lawyer with more than 20 years' experience advising on complex insolvency, restructuring, and commercial litigation matters. Her practice focuses on contentious insolvency, corporate restructuring, class actions, and commercial disputes, with particular expertise in advising insolvency practitioners, secured creditors and stakeholders involved in financially distressed businesses.

Throughout her career, Natasha has been involved in many of Australia's most significant insolvency and restructuring matters, including the administration of the Virgin Australia Group, the restructuring of Speedcast International Ltd, the Australian aspects of the Lehman Brothers collapse and the long-running liquidation of HIH Insurance. She is a former Legal Director of the Australian Restructuring, Turnaround and Insolvency Association (**ARITA**) and has been actively involved in insolvency law reform, professional education, and policy development for many years. In addition to her consulting practice, Natasha lectures in corporate and insolvency law at postgraduate level and regularly develops and delivers professional education programs for lawyers and insolvency practitioners.

Natasha is a member of the Insolvency and Restructuring Committee of the Business Law Section of the Law Council of Australia, a Fellow of ARITA and a Fellow of INSOL International, having been awarded the Stephen Adamson Award for achieving the highest honours in the INSOL Global Insolvency Practice Course in 2024/25. Her work combines practical experience in complex restructurings with a longstanding interest in insolvency law reform, legislative design, and the development of Australia's insolvency framework.