AUSTRALIAN CREDIT FORUM

Australian Credit Forum Inc
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Attn: David Hunt
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8 July 2026

Australian Government
Attorney-General's Department

Dear Sir/Madam

Submissions to the Australian Government – Reducing Barriers to Business Dynamism

The Australian Credit Forum (**ACF**) welcomes the opportunity to provide a submission to the Productivity Commission's inquiry into *Reducing Barriers to Business Dynamism in Australia*. The inquiry examines whether Australia's regulatory and insolvency frameworks create unnecessary barriers to business entry, growth, restructuring, transfer and exit, and seeks to identify reforms that improve productivity, innovation, competitiveness and economic efficiency.

The ACF was established in the early 1970's by a group of senior credit professionals. The group recognised the need to develop an association where members could meet on a regular basis to exchange thoughts and ideas to strengthen their own knowledge but also the standards of the industry.

The association meets on a regular basis to discuss and review existing and proposed changes to the Federal and State Governments legislation that might have an impact on their company's credit policies and practices in their day-to-day role as credit professionals.

The members of ACF are drawn from all areas of the credit profession across a range of industry groups including but not limited to senior credit managers, members of the legal profession, insolvency practitioners, credit insurance underwriters and brokers, mercantile agents and credit reporting agencies. The depth and diversity in experience of the members ensures that a broad cross section of the credit industry considers the impact of all relevant legislation.

Accordingly, this submission focuses on those aspects of the inquiry that are most relevant to their experience as professional creditors and providers of trade credit, particularly in relation to insolvency frameworks, restructuring processes, business transparency and the factors that influence the willingness of creditors to support businesses through periods of financial difficulty.

Unfair Preference Claims

1. The ACF's position

   The ACF considers that unfair preference claims discourage suppliers from continuing to support financially distressed but potentially viable businesses, reducing the prospects of successful business rehabilitation and restructuring.

2. Why reform is needed

   The ACF's members consistently report that unfair preference claims are the single most significant insolvency issue affecting their willingness to continue supporting distressed customers. Creditors who continue supplying a customer, enter payment arrangements, or accept payments in good faith may subsequently be required to repay those funds years later if the business enters liquidation.

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The practical effect is that suppliers withdraw support earlier than they otherwise would. Rather than promoting business rehabilitation, the current regime incentivises creditors to reduce credit limits, cease supply or insist upon cash terms at the first signs of financial difficulty.

Members provided examples where:

(a) suppliers stopped supporting customers undergoing restructuring because of preference risk;

(b) suppliers joined Small Business Restructuring processes solely to avoid future preference claims;

(c) credit professionals adopted defensive credit policies rather than supporting recovery efforts.

3. Recommendations

The ACF recommends:

(a) exempting ordinary-course payments made to unrelated arm’s length creditors;

(b) limiting claims to circumstances involving actual knowledge of insolvency, undue pressure or related-party transactions;

(c) reducing the limitation period for commencing claims from three years to 12 months;

(d) requiring liquidators to demonstrate a net benefit to creditors before commencing proceedings.

Tax Debt Transparency

1. The ACF’s position

Creditors should have access to accurate and ongoing information regarding significant tax debt liabilities.

2. Why reform is needed

The ACF members report that tax debt disclosure arrangements do not currently provide creditors with sufficient information to make informed credit decisions.

Members highlighted situations where businesses entered repayment arrangements with the ATO and the tax debt disclosure subsequently disappeared from credit reports. Trade creditors were then unaware that substantial tax liabilities remained outstanding and extended additional credit that otherwise may not have been approved.

The lack of transparency can result in poor allocation of trade credit and increase the risk of business failure by preventing creditors from accurately assessing a business's financial position.

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Tax debt transparency is not simply a recovery issue. It directly affects the allocation of credit throughout the economy and creditors' ability to support businesses sustainably.

3. Recommendations

The ACF recommends:

(a) retaining ATO tax debt disclosures on credit reports after a payment arrangement has been entered;

(b) updating disclosures to reflect repayment status;

(c) reviewing the current disclosure threshold;

(d) improving visibility of tax debt information available to commercial credit providers.

Small Business Restructuring (SBR)

1. The ACF's position

The Small Business Restructuring (**SBR**) regime should continue to operate but requires reform to improve creditor confidence and participation.

2. Why reform is needed

The ACF considers that aspects of the current SBR regime discourage ongoing supplier support, reducing the likelihood of successful business restructures and limiting the effectiveness of the regime as a rehabilitation pathway.

Members report that uncertainty within the current SBR framework discourages continued supply and engagement.

Some creditors cease trading once an SBR commences because they are uncertain about:

(a) admissible debts;

(b) preference claim exposure;

(c) treatment of essential suppliers;

(d) reliability of financial information provided by directors.

This outcome undermines the purpose of the regime, as many viable restructures depend upon ongoing support from key suppliers.

3. Recommendations

The ACF recommends:

(a) stronger eligibility requirements relating to books and records;

(b) early verification of creditor claims;

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(c) clarification of admissible debt provisions;

(d) improved creditor voting rights where plans fail;

(e) greater certainty for essential trade suppliers.

Illegal Phoenix Activity

1. The ACF's position

   The greatest opportunity for reform is improved enforcement of existing phoenixing law.

2. Why reform is needed

   The ACF considers that illegal phoenix activity undermines market confidence, increases the cost of credit and creates an uneven competitive environment for compliant businesses.

   Members report that illegal phoenix activity remains prevalent despite legislative reforms. Particular concerns include limited enforcement activity, lack of practical use of Director Identification Numbers for creditors, and increasingly sophisticated asset-transfer arrangements.

   Creditors continue to experience losses where businesses transfer operations to new entities while leaving liabilities behind in insolvent entities.

3. Recommendation

   The ACF recommends:

   (a) improved ASIC enforcement capability and resourcing;

   (b) integration of Director Identification Numbers with commercial credit reporting;

   (c) mandatory investigation triggers for repeat insolvency events;

   (d) ongoing review of emerging phoenixing structures.

Harmonisation of Insolvency Frameworks

1. The ACF's position

   Australia should move towards greater harmonisation of the corporate and personal insolvency systems, including consideration of a single insolvency regulator

2. Why reform is needed

   The existing framework requires creditors to navigate multiple legislative regimes, regulators and insolvency processes. This creates unnecessary complexity, duplication and cost.

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Simplification would assist creditors, insolvency practitioners and small business owners alike, while supporting more efficient business exits and reallocating capital to productive uses.

3. Recommendations

   The ACF recommends:

   (a) greater alignment between corporate and personal insolvency legislation;

   (b) examination of a single insolvency regulator model;

   (c) improved information sharing and coordination across insolvency systems.

Trusts and Corporate Trustees

1. The ACF's position

   A National Trust Register should be established to improve transparency and reduce the risks associated with trust structures.

2. Why reform is needed

   Creditors regularly encounter difficulty identifying trustees, beneficiaries and the parties against whom rights can be enforced. This increases transaction costs and creates avoidable uncertainty when extending credit.

3. Recommendation

   The ACF recommends the establishment of a publicly accessible National Trust Register recording trustee entities, beneficiaries and relevant trust details. The register should operate in a similar manner to the Personal Property Securities Register and be freely searchable.

Conclusion

The ACF supports the Productivity Commission's objective of reducing barriers to business dynamism and fostering an environment in which businesses can enter, grow, restructure and exit efficiently.

The ACF considers that aspects of the current insolvency framework discourage creditors from supporting financially distressed but otherwise viable businesses, reducing the availability of trade credit and limiting the effectiveness of restructuring and recovery processes. Reforms addressing unfair preference claims, tax debt transparency, insolvency harmonisation, illegal phoenix activity, trust transparency and shortcomings within the Small Business Restructuring regime would improve creditor confidence, support more informed credit decisions and encourage continued support for viable businesses.

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In the ACF's view, a more transparent, efficient and predictable insolvency system would facilitate successful restructures, improve the allocation of capital and support productivity, investment and economic growth. The ACF welcomes the opportunity to contribute to this inquiry and would be pleased to engage further with the Productivity Commission throughout the course of its review.

Regards

Anna Taylor

Chairperson - Legislative Sub-Committee

Australian Credit Forum